THE HON'BLE SRI JUSTICE GODA RAGHURAM
AND
THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P.Nos.6708 of 2003, 1200 of 2003,

C.R.P.S.R.Nos.24532 & 24636 of 2012

%25.02.2013

C.R.P.Nos.6708 of 2003

#Gadda Balaiah and others.

... PETITIONERS

VERSUS

$ The Joint Collector, Ranga Reddy District and others

...RESPONDENTS

< GIST:

> HEAD NOTE:

!**Counsel for the Revision Petitioners: Sri Vedula Venkata Ramana for Sri A. Narasimha Rao**

^ Counsel for Respondents 1 to 7: Sri K.G. Krishna Murthy, Addl. Advocate General

^ Counsel for Respondent No.7: Sri M.V.Durga Prasad
^ Counsel for Respondent No.9: Sri V.L.N.G.K. Murthy for Sri S. Malleswar Rao
^ Counsel for Respondent No.10 : None appeared
^ Counsel for Respondents 11 to 13 & 18: Sri Ch.Durga Prasad
^ Counsel for Respondent No.17: Sri V.L.N.G.K. Murthy
^ Counsel for Respondent No.19: Sri E. Ajay Reddy
^ Counsel for Respondent Nos.20 and 21: Sri Subba Reddy

^ Counsel for Respondent Nos.22 to 25: Sri P. Anil Kumar
^ Counsel for Respondent Nos.26 to 72: Sri B. Subbaiah for C. Hanumantha Rao
^ Counsel for Respondent No.73 to 183: Sri K. Jawahar

C.R.P.Nos.1200 of 2003,

 # S.A.P., ITS AUTHORIZED OFFICER,R.R.DIST

... PETITIONER

VERSUS

$ KASTOPA CORP HYDERABAD

...RESPONDENTS

!Counsel for the Revision Petitioners: The Addl. Advocate General

!Counsel for the respondents: Sri E. Ajay Reddy

? Cases referred

[1] AIR 1988 A.P.77 (F.B)
2 AIR 1994 A.P.57
3 (2008) 16 SCC 299
4 (2004) 2 ALD 526
5 (1976) 2 APLJ 91
6 (2004) 1 SCC 681
7 (1975) 1 SCC 559
8 (1971) 2 APLJ 266
9 AIR 1989 SC 1753
10 (1978) 2 ALT 227
11 (1957) 2 An.W.R 478
12 (1961)1 An.W.R.120
13 (1995) Supp (2) SCC 3
14 (1996) 5 SCC 496
15 (1997) 6 SCC 277
16 (1999) 4 ALD 113
17 (1997) 5 ALT 1
18 (1993) Supp(2) SCC 146
19 (2009) 2 SCC 526
20 (2009) 3 ALD 491 (D.B.)

[21] (2003) 1 SCC 102

[22] (1992) 2 ALT 169 (D.B.)

[23] (2002) 2 ALD 678 (D.B.)

[24] (1978) 1 ALT 73 (NRC)

[25] (1995) 2 ALT 89

[26] AIR 1997 SC 3127

[27] AIR 1978 AP 200

[28] AIR 1979 SC 1320

[29] Chief Justice A.P.vs.L.V.A.Dikshitulu ... AIR 1979 SC 193; Isabella Johnson vs. M.A.Susai… AIR 1991 SC 993

[30] (2005) 10 SCC 603

[31](2004) 3 SCC 1, (2004) 1 SCC 497, (2006) 13 SCC 401, (2007)2 SCC 355 AND (2009) 12 SCC 280

[32] This principle laid down in *Gadde Venkateswar Rao v. Govt. AP* AIR 1966 SC 828 (Para 18) is consistently followed, the latest being AIR 2009 SC 713

[33] Expl. III to Sec. 34(1); Sec. 34(2) & Expl. to Sec. 34 (2) & (3) of the Tenancy Act

[34] Union of India v. Amarendra... AIR 1967 Cal 119

[35] Bishan Singh v. Khajan Singh ...AIR 1958 SC 838. The nature of primary and secondary rights of pre-emption are explained and it was pointed out that the effect of a decree for pre-emption is substitution of the name of the pre-emptor in the place of the vendee under the offending sale. From this it is clear that the flow of title from the vendor to the vendee is not arrested

[36] Chet Ram v. Amin Lal ...AIR 1983 Punj 50 (FB); Chandiram vs. The State of Punjab ... AIR 1974 Punj243 (FB); Shankerlal Gupta vs. V.Jogeswara Rao... AIR 1980 AP 181 (FB). Specifically in respect of a right of pre-emption under Sec. 22 of the Hindu Succession Act, the Kerala High Court held that there was nothing in the section which indicates that a sale in contravention thereof would be void. Villivi Sridevi Amma v. Subhadra Devi ...AIR 1976 Ker 19.

[37] In contradistinction, Sec. 16 of the A.P. (Andhra Area) Tenancy Act 1956 confers comprehensive jurisdiction on the Special Officer. Consequently the remedial right of pre-emption under Sec. 15 of the Andhra Area Act can be pursued before the Special Officer

[38] (1859)6 CB (NS) 336

[39] Dealing with the right of pre-emption under Sec. 22 of the Hindu Succession Act,the Calcutta High court in Tarak Das V. Sunil Kumar … AIR 1980 Cal 53 held that the remedy is by way of a civil suit.

[40] K.K.Seshadri V. R.M.Seshadri ... AIR 1973 SC 1311 and Roshanlal V. Madanlal ... AIR 1975 SC 2130

[41](1989) 1 SCC 101 (Para 11 @ page 110.

[42] (2001) 3 SCC 537 (para 11 & 14 @ page 543-544)

[43] (1996) 10 SCC 671

[44] AIR 2007 SC 1145

[45] 1961 (1) An.W.R.413

[46] 2001 (10) SCC 605

47 1977 A.L.T. 174 (DB) (NRC)

[48] 2004 (1) S.C.C 287

[49] (2010) 6 S.C.C. 427

[50] (2008) 7 SCC 293

[51] AIR 2002 SC 1003

[52] AIR 1998 SC 3335

[53] 2001 (3) ALD 469

[54] (1991) 1 SCC 37
[55] 1957 ALT 217
[56] 1960 ALT 10
[57] (1999) 2 SCC 297
[58] AIR 1963 SC 698
[59] (2003) 9 S.C.C. 525
[60] (2004) 8 SCC 706
[61] (2009) 2 SCC 315
[62] (2000) 7 S.C.C. 291
[63] (1978) 1 APLJ 478
[64] (2003) 8 S.C.C. 413
[65] AIR 2004 S.C. 3362

THE HON'BLE SRI JUSTICE GODA RAGHURAM

AND

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P.Nos.6708 of 2003, 1200 of 2003, C.R.P.S.R.No.24532 of 2012 and C.R.P.S.R.No.24636 of 2012

COMMON ORDER:

A factual narrative going back to over seven decades; competing claims and proceedings under two legislative regimes; incoherent and often mutually contradictory assertions and responses presented before statutory, *quasi-judicial* and judicial authorities; rights predicated upon ambiguous records, often alluded to and less often brought on record; reliefs sought without fidelity to jurisdictional limitations and/or settled juridical norms of repose like *res-judicata* and irrevocably concluded proceedings; orders by statutory, *quasi-judicial* and judicial authorities without reference to all applicable legal norms and binding precedents on areas of jurisdiction and effect of irreversibly concluded proceedings; suppression of relevant facts including those that go to the root of jurisdiction; a *blitzkrieg* of random and occasionally vagrant litigation; competing assertions as to *locus-standi*

deficit; and an order of remit by the apex Court with a specific direction to consider enumerated and other issues that may be raised, comprise the bouquet (or the strange alchemy if you will) of facts and circumstances that constitute the substratum of these Revisions. We now proceed to unravel the cobwebs, as best we are able to. But, now to judgment.

1. CRP No.6708 of 2003 was filed under S.91 of the A.P. (TA) Tenancy and Agricultural Lands Act, 1950 (for short, "the Tenancy Act") challenging the order dated 9.12.2003 in File No.F2/4902/2001 of the Joint Collector, Ranga Reddy District under S.90 of the said Act. The Joint Collector had set aside the order dated 28-4-2001 of the Revenue Divisional Officer, Chevella Division in Case No.G/3640/96 dated 28.4.2001 granting sale certificate under S. 38-A of the said Act in respect of Ac.17.20 guntas in Sy.No.51, Ac.15.36 guntas in Sy.No.52 and Ac.4.01 guntas in Sy.No.53 (Paiki) of Gachibowli Village in favour of 19 persons who claim to be Protected Tenants under the said Act represented by their GPA – P. Venugopal Reddy.

2. CRP SR No.24532 of 2012 is filed under S. 91 of the Tenancy Act on 5.9.2012 by legal representatives of Gadda Shanker and one Gadda Krishna (allegedly protected tenants), challenging the order dated 9.12.2003 in Case No.F2/4903/2002 of the Joint Collector, Ranga Reddy District under S. 90 of the said Act . The Joint Collector had set aside the order dated 28-4-2001 of the Revenue Divisional Officer, Chevella Division in Case No.G/3640/96 dated 28.4.2001 mentioned above. The petitioners herein also filed CRP MP No.5812 of 2012 to grant leave to file the CRP against the said order; CRP MP No.5813 of 2012 to dispense with the filing of the copy of the said order; and CRP MP SR No. of 2012 under S.5 of the Limitation Act, 1963 to condone the delay of

3100 days in filing the above CRP.

3. CRP SR No.24636 of 2012 was filed under S. 91 of the Tenancy Act on 6.9.2012 by one Mohd. Ghouse (an alleged protected tenant) against the order dated 9.12.2003 in Case No.F2/4903/2002 of the Joint Collector, Ranga Reddy District under S. 90 of the said Act mentioned in para 2 above. The petitioner – Ghouse filed CRP MP No.6283 of 2012 to dispense with the filing of the copy of the said order; and CRP MP No.6538 of 2012 under S. 5 of the Limitation Act, 1963 to condone the delay of 3079 days in filing the CRP.

4. CRP No.1200 of 2003 was filed under S.21 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, "the Ceiling Act"), by the State of Andhra Pradesh challenging the order dated 2.9.2002 in LRA No.16/2001 of the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy District confirming the order dated 28-4-2001 of the Land Reforms Tribunal-cum-Revenue Divisional Officer, Chevella Division. By this order, M/s. Kastopa Corporation (declarant under the Ceiling Act) (for short, 'Kastopa') was declared a non-surplus holder and the Mandal Revenue Officer, Serlingampalli Mandal, directed to restore possession of Ac.11.28 guntas in Sy.No.46, Ac.16.10 guntas in Sy.No.47/P and Ac.9.02 guntas in Sy.No.53 of Gachibowli Village, to the declarant.

5. The following is the decennial sequence of events leading to the filing of the above cases.

A. THE CHRONOLOGY OF EVENTS:

The first decade – 1940 to 1950

One Ilias Burni was the owner of Ac.93.25 guntas in S.Nos.44, 45, 46, 51, 52 and 53 of Gachibowli Village.

On 22nd February, 1350 (1940), one Lingamma sold Ac.63-18 guntas in Sy.Nos.37, 40, 42, 43 and 47 to

Ilias Burni.

Thus Ilias Burni became the owner of Ac.157-03 guntas in Sy.Nos.37, 40, 42, 43, 44, 45, 46, 51 and 53 of Gachibowli village.

On 3rd Khurdad 1356 F (1946), Lingamma sold Ac.17-00 in Sy.No.50 to Haleema Khatoon.

On 28-2-1950, Haleema Khatoon sold the above Ac.17-00 in Sy.Nos.50 to Ilias Burni.

Ilias Burni had also purchased Ac.9.08 guntas in Sy.No.35 and Ac.7-06 guntas in Sy.No.36 of Gachibowli village.

Thus by 1950, Ilias Burni became the absolute owner of land admeasuring Ac.190-17 guntas in Sy.Nos.35, 36, 37, 40, 42, 43, 44, 45, 46, 50, 51, 52 and 53 of Gachibowli village.

It is alleged by all parties that there were tenants in the above lands. The identity of the tenants is however in dispute in these cases.

The second decade - 1950 to 1960 :

In 1952 Lingamma filed O.S.No.11/1 of 1952 for declaration of her title against persons who claimed to be tenants, alleging that they were encroachers. She also sought injunction against them.

In 1958 – O.S.No.11/1 of 1952 was decreed.

A.S.No.25 of 1958 was filed in the High Court by the alleged tenants.

It is alleged by the petitioners in CRP Nos.6708 of 2003, CRP SR No.24532 of 2012 and CRP SR 24636 of 2012 that a list of protected tenants was prepared under

S.37-A of the Tenancy Act in 1958.

The third decade – 1960 to 1970 :

On 2.9.1961, daughters of Ilias Burni sold Ac.157-03 gts in Sy.Nos.37, 40, 42, 43, 44, 45, 46, 47, 51, 52 and 53 in favour of Kastopa represented by its partner Kantilal C. Seth (R-19 in CRP No.6708 of 2003 and the 1st respondent in CRP No.1200 of 2003).

On 28.9.1964, the daughters of Ilias Burni also sold Ac.33-14 gts in Sy.Nos.35, 36 and 50 to Kastopa.

Thus, during 1964 Kastopa became the land holder of the entire extent of Ac.190-17 gts.

A compromise petition was jointly filed by Lingamma and the alleged tenants before the Tahsildar, Hyderabad West Taluq wherein they surrendered their tenancy rights in Sy.Nos.37, 40, 42, 43, and 47 of Gachibowli village. In File No.A3/18005/64, the Tahsildar accepted their surrender of tenancy rights and their names were deleted from the original tenancy register, on 20.2.1965.

On 31.8.1965, a compromise decree was passed in A.S.25/1958.

Sometime later, other tenants numbering five also filed a written application surrendering their tenancy rights before the Tahsildar, Hyderabad West in file No.A4/2556/66 and orders were passed accepting the surrender of their tenancy rights on 16.10.1966 and their names were also deleted from the final tenancy register.

One of the issues which arise is as to how such a compromise could be valid when way back in 1950 itself

Lingamma ceased to be the owner of the land, having sold it to Ilias Burni, whose daughters sold the land to Kastopa by 1964.

The fourth decade – 1970 to 1980 :

In 1973, Kastopa filed a declaration under S. 8 of the Ceiling Act before the Land Reforms Tribunal, Hyderabad (West), declaring its holding of Ac.190-17 gts. in various survey numbers of Gachibowli village. This case was numbered as C.C.No.265/10/75. In the declaration Kastopa did not show that there were any protected tenants in the lands.

On 17.3.1975, an objection petition was filed before the Addl.Revenue Divisional Officer, Taluk west, Hyderabad District (exercising powers under the Ceiling Act as Land Reforms Tribunal) by Gaddi Maisiah, Khanamet Baliah, Manikonda Kondiah, Gadde Lachiah, Shetty Venkiah, Darugupalli Baliah, Legal representatives and sons of Gadde Yettiah (died), Gadde Ramiah (son and legal representative of Bal Lingiah) and Manikonda Pentiah claiming to be the protected tenants of the above lands, requesting grant of ownership rights u/S.38-E of the Tenancy Act in view of S.13 of the Ceiling Act.

On 30.5.1975, a compromise petition was filed by the above named persons before the Addl.Revenue Officer, Taluk West, Hyderabad District pleading that they were waiving their rights in respect of Ac.157.3 gts in Sy.No.37, 40, 42-47, 51-53 of Gachibowli Village; that their claim u/S.38-E of the Tenancy Act be dismissed as not pressed; that they have validly surrendered their protected tenancy rights, if any, in favor of Kastopa; that they were never in possession; and pleading that Kastopa was in possession of the above lands.

By the order dt.31.5.1975 in Proc.LLRW/47/75, the Land Reforms Tribunal, Hyderabad West considered the above petition and held that the names of all the protected tenants have been deleted from the final tenancy register of 1951; that the same names are found in the tenancy register prepared in 1958; that all the protected tenants surrendered protected tenancy rights and the same has been accepted by the Tahsildar. He dismissed the petition filed by Gaddi Maisiah and others for grant of certificates u/S.38-E of the Act on the ground that they have no locus standi to file it after surrendering their protected tenancy rights over the above lands in 1965 and 1966 before the Tahsildar, Hyderabad West. He allowed the petition of Kantilal Seth, partner of Kastopa to drop the proceedings u/S.38-E of the Tenancy Act and ordered that names of the protected tenants published in the provisional list under Rule 4 (1) of the Rules framed under the Ceiling Act be deleted and directed issuance of nil final list under Rule 4(3) of the said rules.

On 9.12.1975, the Land Reforms Tribunal in CC No.264/W/75 passed orders declaring that Kastopa was holding an excess of 2.2862 SH over the permissible limit of one SH under the Ceiling Act.

Kastopa filed LRA No.10 of 1976 before the Land Reforms Appellate Tribunal, Hyderabad. The said appeal was dismissed on 6.4.1976.

Kastopa filed CRP SR No.24698 of 1976 before the High Court but the same was also dismissed on 28.4.1976. This order has become final. There was no further appeal to the Supreme Court.

Subsequently, on 5.5.1976 Kastopa offered to surrender Ac.137.17 cts in Sy.Nos.35, 36, 37, 40, 42 to 47 and 53(P) to the State towards the 2.2862 SH found to be

surplus in its holding.

Notice in Form No.VIII under sub-rule (4) of Rule 7 of the Rules framed under the Ceiling Act was issued on 4.9.1976 calling for objections on the surrender offered by the declarant. This notice was published as required under the Rules but no objections were filed.

On 6.10.1976, the LRT, Hyderabad West passed orders u/s.10(3) of the Ceiling Act approving the surrender proposed by Kastopa.

On 13.10.1976, possession of the surrendered land of Ac.137.17 cts was taken by the Revenue Inspector, Lingampalli.

On 24.1.1978, a notice u/Rule 12 (2) was issued stating that the lands mentioned therein have vested in the State u/s.11 of the Ceiling Act and inviting claims for compensation in respect of the surrendered land within 30 days of publication of the said notice in the A.P.Gazette. This was published in the A.P.Gazette on 11.5.1989. None of the alleged protected tenants filed any claim petitions.

In April, 1978, a notice u/s.16 of the Ceiling Act was issued stating that the LRT is proposing to determine the amount payable for the lands surrendered u/s.15 of the said Act and inviting all persons having any interest in the lands to appear and make pleas for determination of the amount and adduce evidence in that behalf.

In these CRPs., it is also to be considered whether the concluded proceedings under the Land Ceiling Act could be reopened at the instance of persons claiming to be protected tenants after computation of holding of the declarant Kastopa had attained finality.

On 20.4.1979, G.O.Rt.No.594 was issued by the Government granting lease of Ac.31.34 gts in Sy.Nos.46 to 47 to Maharshi Institute of Creative Intelligence, Hyderabad.

It is alleged by the petitioners in CRP.No.6708/2003 that on 6.11.1979, the Tahsildar had passed orders relating to succession of some of the alleged deceased tenants.

W.P.No.4590 of 1980 was filed by 22 persons claiming to be protected tenants of lands in Sy.Nos.37, 40, 42, 43, 44, 45, 46, 47, 51, 52 and 53 totaling Ac.157.03 gts of Gachibowli village contending that their protected tenancy rights were not effected by surrender of surplus land by the Pattedar (Kastopa) under the Land Ceiling Act; that they continue to be protected tenants under the Tenancy Act; that they have filed a certified extract of the tenancy register prepared under S.37-A of the Tenancy Act in 1958 showing that they were protected tenants under the Land Holder - Ilias Burni; and that the State acted illegally in granting lease of lands covered by Sy.Nos.46 and 47 admeasuring Ac.31.43 gts in favour of the Maharshi Institute of Creative Intelligence.

The fifth decade – 1981 to 1990 :

By its order dated 17.2.1981 in W.P.No.4590 of 1980, this Court directed the Revenue Divisional Officer (RDO) to conduct an enquiry as to:

(i) Whether the petitioners (in the said writ petition) were declared as protected tenants of the lands concerned including Sy.Nos.46 and 47 and if so, under what provision and when? and

(ii) Did the petitioners or any of them or their predecessors in interest surrender their tenancy rights according to law, and if so, which of them, when and in

which proceedings?

This Court directed the RDO to take into consideration all the relevant facts and circumstances including the order of the Tahsildar dated 6.11.1979 under which he is alleged to have granted succession in favour of several persons including the petitioners in W.P.4590/1980 on the death of their predecessors in interest. It also directed that the impugned G.O. shall not be given effect to pending passing of orders by the RDO and that *status quo* obtaining as on the date of the disposal of the Writ Petition shall continue.

Subsequently, the RDO, Chevella in reference No.G/1565/81 dated 27.7.1981 conducted an elaborate enquiry and passed an order dated 27.7.1981 in which he referred to existence of protected tenants in the entire land of Ac.190.17 gts, and expressed a doubt about the validity of a provisional list of deemed protected tenants allegedly issued by the Tahsildar under S.37-A of the Tenancy Act. He noted that the names of some strangers were also entered as co-tenants in the tenancy register; that only four persons by name (i) Khanammet Balaiah (ii) Manikonda Kondaiah (iii) Gadda Maisaiah and (iv) Darlapalli Babaiah are protected tenants under the provisions of S.37-A of the Tenancy Act in respect of Ac.157.05 gts in Sy.Nos.37, 40, 42 to 47, 51, 52 and 53 of Gachibowli village; and the remaining petitioners are found to have not been declared as protected tenants on the said lands u/S.37-A of the Tenancy Act. He declared that the proceedings of the Tahsildar dt.6.11.1979 in which the names of all the petitioners before him were brought on record is void. The RDO also held that Dargupalli Babiah had died 8 years earlier but his name is being continued as a protected tenant in all petitions, in W.P.No.4590/1980 and in the petition in the enquiry before him as well. He also held that the tenants had not surrendered the lands in accordance with S.19 of the Act.

Kastopa also participated in these proceedings.

It is to be seen that the RDO is not a designated officer under the Tenancy Act, authorized to conduct any enquiry into issues of succession to the deceased protected tenants. Only the Tahsildar may do it *qua* Rule 14 r/w Rule 26 of the Hyderabad Tenancy and Agricultural Land Rules, 1950 u/S.35 and 37. What is the weight to be attached to this report dated 27.7.1981 of the RDO is also therefore an issue which arises for consideration.

In 1981, 24 persons including the four persons mentioned above filed petitions for grant of certificates under S.38-E of the Tenancy Act before the District Collector, Ranga Reddy District claiming that the above named four persons are original protected tenants and the rest, the legal representatives of other deceased protected tenants, seeking ownership certificate under S.38-E of the Tenancy Act on the ground that they are protected tenants. As the Collector, Ranga Reddy District did not pass any orders on their petitions, they filed W.P.No.4059 of 1982 before this Court contending that they are protected tenants to whom a protected tenancy certificate under S.37-A of the Tenancy Act was issued in respect of an extent of Ac.157.03 gts in Sy.Nos.37, 40, 42 to 47, 51, 52 and 53 of Gachibowli Village and that they are entitled to the benefits of S.38(1), S.38-E and S.38-B of the Tenancy Act, notwithstanding any proceedings under the Ceiling Act. The petitioners therein specifically contended that though they made a claim in the Writ Affidavit to consider their case under S.38-A and 38-B of the Tenancy Act, they are actually entitled for a direction to consider their case under S.38 apart from relief under S.38-E of the Tenancy Act. They also contended that proceedings under the Ceiling Act had taken place without any notice to them and therefore, they do not bind them. No counter affidavit was filed by the State

Government or the Collector, Ranga Reddy District and others who were respondents in the Writ Petition.

By order dated 15-7-1987, this Court disposed of the Writ Petition directing that the petitioners therein be granted certificate under S.38-E of the Tenancy Act in respect of Ac.73.03 gts as their protected tenancy is established u/S.37-A of the Tenancy Act by observing that the RDO, in his enquiry had held that nothing is placed before him to prove the surrender of tenancy rights by the petitioners u/S.19 of the Tenancy Act; that there is no material to prove that the protected tenants were evicted u/S.19, 32 or 44 of the Tenancy Act; any surrender by the landlord in the land ceiling case has to be ignored as it was done without notice to the petitioners; the authority under the Ceiling Act decided the matter without notice to the petitioners/protected tenants as though there were no protected tenant; and the alleged surrender of tenancy rights by the petitioners is not proved. The Court also held that if petitioners wish to purchase the land under S.38 of the Tenancy Act, they should have filed applications before the RDO and not the Collector or the Government as they have done. It permitted the petitioners therein to make such an application within two months from the date of the order in the Writ Petition and on filing of the same, the RDO, Chevella was directed to enquire into the matter and pass orders within three months thereafter.

During the period 1986-1987, it is alleged that Kastopa executed several sale deeds in favour of respondents 8 to 17 in CRP No.6708 of 2003 and 588 other persons selling parcels of land in Sy.Nos.50, 51, 52 and 53 (Paiki) to which sale deeds the petitioners in W.P.No.4059 of 1982 or some of them joined as vendors. One such sale deed dated 28.7.1987 was filed before the Joint Collector, Ranga Reddy District and also in this Court. In this sale deed, there is a recital that the 24 persons who were parties in W.P.No.4059 of 1982 were

protected tenants declared under S.37-A of the Tenancy Act; that Kastopa had offered to sell the parcel of the land which was subject matter of the said sale deed to them under S.38-D of the Tenancy Act in writing; that the latter had expressed their unwillingness to purchase the property, as such the sale deed is being executed in favor of a third party stranger and that they were added as parties only to avoid future complications.

The validity of the said sale deed and similar other instruments allegedly executed by Kastopa in favour of various purchasers is also a matter which requires to be decided herein.

The 588 persons mentioned above who had allegedly obtained sale deeds from Kastopa formed themselves into a society (allegedly registered under the Societies Registration Act, 1860) by name "M/s.Diamond Hills Association" (R.18 in CRP No.6708 of 2003).

In the meantime, the State filed W.A.No.1420 of 1987 challenging the order dated 15-7-1987 in W.P.No.4059 of 1982.

The sixth decade – 1991 to 2000

The Division Bench by order dated 25-1-1993 dismissed W.A.1420/1987 holding that the order of the Land Reforms Tribunal dated 9.12.1975 declaring Kastopa as the surplus holder under the Ceiling Act to the extent of 2.2862 SH, without reference to rights of protected tenants is of no consequence; that by the time proceedings under the Ceiling Act were initiated, protected tenants had already become owners by virtue of the statutory declaration under S.38-E of the Tenancy Act on 1.1.1973; and that Kastopa could not have surrendered the lands under the Ceiling Act in such a case.

The State did not prefer any appeal to the Supreme

Court against the judgment in W.A.No.1420 of 1987.

Thereafter, on 25.4.1995 in file No.G/1188/93, ownership certificates under S.38-E were issued by the RDO, Chevella to (i) Khanamet Balaiah; (ii) legal representatives of Mohammed Ismail by name Mohd. Vazeer, Mohd. Yousuf; (iii) legal representatives of Manikonda Kondaiah by name Pentamma and Yadaiah; (iv) legal representative of Ahmed Sab by name Syed Khaja; (v) legal representative of Ahmed Ali by name Khasim Ali; (vi) Gadda Maisaiah; (vii) legal representatives of Darlapalli Babaiah by name Narsimha and Gandaiah; (viii) legal representatives of Bala Lingaiah by name Babaiah, Swamy, Maisaiah, Yadaiah, Arjun and Raju (sons of late Ramaiah son of Bala Lingaiah), Balraj, Eswar and Shantamma (sons and wife of Balaiah son of Bala Lingaiah); (ix) legal representatives of Gadda Veeraiah by name Yettaiah; (x) legal representatives of Gadda Laxmaiah by name Pochamma, Narsimha and Krishna; and (xi) legal representative of Madiga Venkaiah by name Pentaiah in respect of Ac.73.03 guntas in S.Nos.37, 40, 42, 43, 44 and 45, pursuant to the order in W.P.No.4059 of 1982 dated 15.7.1987.

On 1.4.1996, an application was filed by the declarant-Kastopa under S.22(1) of the Ceiling Act, to re-open and re-compute it's holding in the light of the order in W.P.No.4059 of 1982 and W.A.1420/1987 and for a detailed enquiry as to the rights of protected tenants under S.13 of the Ceiling Act.

By the order dated 31.7.1996, Land Reforms Tribunal reopened Case No.W/264/75 of the declarant following the observations of this Court dated 25-1-1993 in W.A.No.1420 of 1987.

The State challenged the same in LRA No.89/96

before the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy District. In the appeal, the protected tenants filed I.A.No.1423 of 1996, to implead themselves. The application was allowed on 30-12-1996 and they were impleaded as R.2 to R.20 to the appeal. The said appeal was allowed on 21.7.1997 by the Land Reforms Appellate Tribunal, Ranga Reddy holding, *inter alia*, that the High Court in its order in W.A.No.1420 of 1987 did not direct that the ceiling case No.W/246/75 of the declarant be reopened; that the declarant had suppressed the existence of protected tenants over the land in the declaration filed by him in 1975 ; that he was found to be a surplus holder to the extent of 2.2862 SH and the same was confirmed by the High Court in CRP SR No.24698/1976 dated 28.4.1976; that the observations made in the order of the Division Bench in W.A.No.1420 of 1987 were made not with respect to the declarant in regard to the computation of his holding or declaring him as a surplus land holder but in respect of the protected tenants who were found to be in possession and by force of statutory declaration, they were declared as owners under S.38-E of the Tenancy Act. It further held that as far as the declarant is concerned, reopening of his case under the Land Ceiling Act is impermissible in view of the dismissal of CRP SR No.24698 of 1976 and the said order binds the declarant and the Tribunal under the Ceiling Act unless varied or set aside by the High Court or the Supreme Court.

Kastopa filed CRP No.3755 of 1997 before this Court challenging the order dated 21.7.1997 in LRA No.89 of 1996. On 29.1.1998 initially, the Civil Revision Petition was dismissed as withdrawn. Subsequently, the said order appears to have been recalled and was disposed of on 06-11-1998 recording that the petitioner has no objection for recognizing rights of the protected tenants which were upheld in Writ Appeal No.1420 of 1987; this

order shall not be construed as enabling any authority to reopen proceedings already concluded in respect of the rights of the protected tenants; and the Pot Kharab lands in Sy. Nos.37, 40, 42 to 47 and 51 to 53 situated at Gachibowli village, Serilingampally mandal, Ranga Reddy District shall also be excluded for the benefit of the tenants as well as petitioner; with respect to the remaining lands, wherever Pot Kharab lands are there as per the Revenue Records, benefit shall be given to the petitioner and such lands excluded from computation. It was also directed that the holding of the declarant shall be re-computed in the light of this order. It set aside the order under revision.

In the meantime, on 19.8.1996, an application purported to be under S.38-A and 38-B of the Tenancy Act was filed by persons who obtained certificate under S.38-E of the Tenancy Act in respect of Ac.84 in Sy.No.46, 47, 51, 52 and 53 of Gachibowli Village. The applicants contended that they were protected tenants under S.37-A of the Tenancy Act; they had never surrendered their protected tenancy rights under the said Act; they had filed W.P.No.4059 of 1982 in the High Court which was disposed of on 15.7.1987 directing the RDO to issue ownership certificate under S.38-E of the Tenancy Act in respect of Ac.73.03 gts in Sy.Nos.37, 40, 42, 43, 44 and 45 of Gachibowli Village; that the High Court had held that the petitioners therein can apply for grant of sale certificate under S.38-A or 38-B of the Tenancy Act, that the said order was confirmed in W.A.No.1420 of 1987; that they were granted ownership certificates under S.38-E of the Tenancy Act pursuant to the orders in W.P.No.4059 of 1982; that the land holders late Ilias Burni and his heirs and successors had already relinquished their rights in respect of the remaining area of Ac.84 and covered by Sy. Nos.46, 47, 51, 52 and 53; and therefore, they should be given sale certificate under

S.38-A, 38-B of the Tenancy Act.

When the said application was not disposed of, they filed W.P.No.3251 of 1998 in the High Court of A.P. The said writ petition was disposed of on 9.2.1998 directing the RDO, Chevella to dispose of the said application within three months.

In the meantime, the Authorized Officer (Land Reforms), Ranga Reddy District filed an appeal before the Joint Collector, Ranga Reddy District in File No.04/4882/96 under S.90 of the Tenancy Act challenging the grant of certificates under S. 38-E of the Tenancy Act to the protected tenants by the RDO, Chevella in file No.G/1188/93 dated 25.4.1995. The appeal was dismissed by the Joint Collector, Ranga Reddy District by order dated 20.6.1998.

On 18.2.1999, the Land Reforms Tribunal re-computed the holding of the declarant and held that Kastoba was a surplus holder only to the extent of 0.62636 SH and on 26.5.1999 directed Kastopa/declarant to surrender land in Sy.Nos.46, 47 and 53.

Kastopa then offered to surrender land in Sy.Nos.46, 47 and 53 (Paike).

Challenging the same, the protected tenants filed LRA No.13/2000 before the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy District under S.20(3) of the Ceiling Act. The appeal was allowed on 29.9.2000 setting aside the order dated 26.5.1999 of the Land Reforms Tribunal, Ranga Reddy District in CC No.W/264/75 (relating to the declarant-Kastopa) and remitting it to the lower Tribunal (RDO, Chevella) for fresh disposal, to consider claims of the protected tenants as per S.13 of the Ceiling Act, since it

had not considered claims of protected tenants while passing the order dated 26.5.1999.

Meanwhile, W.P.No.14708 of 1999 was filed by the protected tenants challenging the action of the State in not considering the tenancy rights of the petitioners in respect of land in Sy.No.46, 47 and 53 (Paike). The said Writ Petition was disposed of directing the authorities to consider the application by the tenants' u/S.38-A of the Act in respect of land in Sy.No.46, 47 and 53 (Paike).

While so, the State issued G.O.Ms.No.183 MA, on 24.3.2000 notifying the land use of the subject land as residential zone under A.P. (Urban Areas Development) Act, 1973. Under the said G.O., lands in Sy.Nos.19 to 53 of Gachibowli village were notified in the Zonal Development Plan for Ramachandrapuram Zone Non-Municipal Area and were designated as "Residential Use Zone". On issuance of such a notification, whether lands in the above Survey numbers could still be treated as agricultural lands governed by the Tenancy Act also requires to be considered.

The seventh decade – 2001 to 2010 :

On 28.4.2001, the RDO, Chevella Division, Ranga Reddy District passed orders in ref. No.G/3640/96 directing issuance of sale certificate under S.38-A of the Tenancy Act in respect of Sy.Nos.51 (Ac.17.20 gts.), 52 (Ac.15.36 gts.) and 53 (Paike) (Ac.4.01 gts.) in respect of Ac.37-17 guntas, as mutually agreed between Kastopa and the protected tenants.

It requires to be noticed that during the pendency of above proceedings before the RDO, Chevella Division, Kastopa and the protected tenants mutually agreed that although the protected tenants initially sought sale

certificate under S.38-A of the Tenancy Act in respect of land in Sy. nos.46, 47 and 53-part, they should instead get the said sale certificate in respect of the land in sy. Nos.51, 52 and 53 and that the landholder/Kastopa would retain the lands in Sy. No.46 (Ac.11.28 gts), 47 (Ac.16.10 gts) and 53-part (Ac.9.02gts). As already noted, Kastopa had sold to members of M/s. Diamond Hills Association and to respondents 8 to 17 in C.R.P.No.6708 of 2003, during the period 1986-87, land in Sy.Nos.50, 51, 52 and 53 of Gachibowli village. The agreement between Kastopa and the protected tenants before the RDO, Chevella to swap the lands as above was behind the back of the purchasers i.e. R-8 to R-17 in C.R.P.No.6708 of 2003 as also members of M/s.Diamond Hills Association. Whether such an agreement could have been entered into between protected tenants and Kastopa after some of the protected tenants and Kastopa had sold the land in Sy. Nos.51 to 53 of Gachibowli village between 1986 - 87 and whether the said agreement to swap the lands is legal and valid has also to be gone into.

On the same day, the RDO, Chevella, exercising jurisdiction as the Land Reforms Tribunal under the Ceiling Act passed orders in C.C.No.W/264/75 dated 28-04-2001 holding that the declarant Kastopa has become a non-surplus holder after deleting:

(i) Ac.73.06 gts in respect of which certificates under S.38-E of the Tenancy Act were given to protected tenants,

(ii) Ac.20-35 cts of Pote Kharab area in Sy. Nos.45, 46, 17, 50, 51, 52 and 53, and

(iii) Ac.37.10 gts in Sy. Nos.51, 52 and 53 paiki in respect of which sale certificate under S.38-A of the Act was issued to protected tenants.

The RDO further directed that lands in Sy.Nos.46

(Ac.11.28),47/P (Ac.16-10 gts) an 53 (Paike) (Ac.9.02 gts) be restored to the declarant. Thus the State, which had obtained surrender of Ac.137.17 cts in 1976 from Kastopa and had even taken possession of the said land on 13.10.1976, was deprived of a substantial extent, of Ac.131 and left with a pittance, a meager extent of Ac.6.17 gts.

On coming to know of the above order dated 28-04-2001 in Ref. No.G/3640/96 of the RDO, Chevella granting sale certificate under S.38-A of the Tenancy Act to the protected tenants in respect of Ac.37.16 gts in Sy. Nos.51 to 53 of Gachibowli village, R-8 to R-18 in C.R.P.No.6708 of 2003 filed an appeal under S.90 of the Tenancy Act before the Joint Collector, Ranga Reddy District. The said appeal was numbered as Case No.F2/4902/2001.

The Authorized Officer (Land Reforms), Ranga Reddy District also filed an appeal under S.90 of the Tenancy Act against the same order. This appeal was numbered as Case No.F2/4903/2002. Whether the appeal under the Tenancy Act could have been filed by the Authorized Officer (Land Reforms), Ranga Reddy District, Hyderabad (and not the State of A.P. or any authorized State actor representing the State), when he had no explicit or ostensible authority to prefer an appeal has also to be considered.

The State represented by its Authorized Officer, Land Reforms, Ranga Reddy District filed an appeal under S. 20 of the Ceiling Act to the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy District, Hyderabad against the order dated 28-04-2001 of the Land Reforms Tribunal-cum-Revenue Divisional Officer, Chevella wherein the latter had declared the declarant Kastopa to be a non-surplus holder under the Act and directed to restore to the declarant

lands in Sy. Nos.46, 47 and 53 of Gachibowli village. On 02-09-2002, this appeal was dismissed by the Land Reforms Appellate Tribunal, Ranga Reddy District.

On 09-12-2003, the Joint Collector, Ranga Reddy District in a common order passed in Case Nos.F2/4902/2001 and F2/4903/2002 allowed appeals filed by R-8 to R-18 in C.R.P.No.6708 of 2003 and the appeal by the Authorized Officer (Land Reforms), Ranga Reddy District and set aside the order dated 28-04-2001 in Ref.G/3640/96 of the Revenue Divisional Officer, Chevella granting sale certificates under S.38-A of the Tenancy Act. He held that most of such certificate holders had executed 588 registered sale deeds in favour of members of Diamond Hills Association and also in favour of R-8 to R-17 in C.R.P.No.6708 of 2003 and are therefore deemed to have relinquished their protected tenancy rights, under Section 19 of the Tenancy Act.

C.R.P.No.6708 of 2003 was filed under S.91 of the Tenancy Act by 19 persons/alleged protected tenants through a General Power of Attorney Holder challenging the order dated
09-12-2003 in File No.F2/4902/2001 of the Joint Collector, Ranga Reddy District.

C.R.P.No.1200 of 2003 was filed under S.22 of the Land Ceiling Act by the State of AP challenging the order dated
02-09-2002 in L.R.A.No.16 of 2001 of the Land Reforms Appellate Tribunal-cum-II Additional District Judge, Ranga Reddy District. Diamond Hills Welfare Association got impleaded as the 2nd respondent in the said C.R.P., by order dated 19-07-2005 in C.R.P.M.P.No.16925 of 2003.

Initially, by a common order dated 07-10-2005, C.R.P.No.6708 of 2003 was allowed and C.R.P.No.1200

of 2003 dismissed by a learned Single Judge of this Court.

Thereafter, Civil Appeal No.3054 of 2006 and batch were filed in the Supreme Court by parties who were unsuccessful in the two revisions.

The Supreme Court on 7.12.2010 allowed Civil Appeal No.3054 of 2006 and batch and remanded the matters back to this Court, framing the following 10 points for consideration and permitting other points to be urged as well :

1. *Whether the respondents or their predecessors were, at any stage, recorded as protected tenants in respect of land measuring Ac.190 Acres 17 gts, situated in Sy. Nos.35, 36, 37, 40, 42-47, 50-53 of Gachibowli Village, Serilingampally Mandal, Ranga Reddy District, Hyderabad or any portion thereof?*
2. *Whether the findings recorded by the RDO in his enquiry report dtd: 27-07-1981 in respect of (a) the status of respondents as protected tenants under S.37-A and (b) absence of proof of surrender in accordance with S.19 of the Act, were challenged by Kastopa Corporation ? If not whether the said findings can be challenged by the successors in interest of Kastopa Corporation?*
3. *In case, questions No.1 and 2 above, are answered in the affirmative, whether the respondents or their predecessors had validly surrendered their tenancy rights in accordance with the procedure prescribed by law. If so, in which proceedings and qua which survey numbers, was the surrender made?*
4. *Whether the sale of plots from the year 1986 onwards by M/s.Kastopa Corporation and the*

protected tenants in favour of the appellants and the petitioners in the concerned SLPs are valid having regard inter-alia to the provisions of the Tenancy Act?

5. *Whether the lands covered by protected tenancy rights were liable to be excluded from the holding of Kastopa Corporation under the Ceiling Act and, if they had not been excluded initially, whether the authorities under the Ceiling Act could exclude them subsequently at the instance of the protected tenants or the land holder?*
6. *Whether there was conversion of the land use for house sites and non-agricultural purposes in respect of the lands in question in accordance with law and if so, what is the effect of such conversion on the rights of the parties and from which date would the conversion be effective?*
7. *Whether surplus land to an extent of Ac.137.17 gts in Sy. Nos.35, 36, 37, 40, 42 to 47 and 53 of Gachibowli village had vested in the Govt., U/s.11 of the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act. 1973 (hereinafter referred to as the 'Land Reforms Act'). If so whether, any transaction by way of sale deeds or otherwise by the 'protected tenants' and the 'pattadars' are void ab initio?*
8. *Whether the ceiling proceedings had attained finality with the dismissal of the Civil Revision Petition (SR) 24698 of 1976 by a learned Single Judge of the High Court vide order dtd:28-04-1976. If so whether the same could not be reopened in writ proceedings and in the absence of necessary parties or in collateral proceedings like Civil Revision Petition No.3577 of 1997?*
9. *Having obtained a consent order dated 20-09-1999 (Justice A.S. Bhate's order) in*

W.P.No.14708 of 1999 for grant of rights under S. 38 (a) in respect of land in Sy. Nos.46, 47 and 53 (Paiki) to the extent of 37 acres, whether the respondents could mutually agree for issue of 38-A sale Certificates qua land in Sy. Nos.51, 52 and part 53 sold to the petitioners herein for valuable consideration?

10. *Whether the respondents are entitled to certificates Us/38-A over Sy. Nos.51, 52 & 53?*

After the remit as above, C.R.P.No.6708 of 2003 and C.R.P.No.1200 of 2003 were restored to the file of this Court for hearing.

Subsequently some persons claiming to be purchasers of plots from members of Diamond Hills Welfare Association filed applications to get impleaded in C.R.P.No.6708 of 2003 and these were ordered by this Court vide order dated 20-06-2012 in C.R.P.M.P.Nos.3020/2011, 4147/2011, 4148/2011, 4149/2011, 4150/2011, 4151/2011, 4164/2011, 3020/2011, 3591/2011, 3358/2011, 3359/2011, 5780/2011 and 5780/2012.

After this Bench commenced hearing CRP.No.6708/2003 and CRP.No.1200/2003, it was contended by the respondents in CRP.No.6708/2003 that petitioners in the said CRP had challenged u/s.91 of the Tenancy Act only the order dt.28.4.2001 of the Joint Collector passed in appeal No.F2/4902/2001 filed by the said respondents (in CRP.No.6708/2003) but failed to challenge the order passed by the Joint Collector in the appeal No.F2/4903/2001 filed by the Authorized Officer, Land Reforms, decided along with the appeal no.F2/4902/2001; that the order in appeal No.F2/4903/2001 had thus become final and would operate as res-judicata; and consequently even the order

in F2/4902/2001 is rendered unassailable.

Responding to this submission of the respondents in CRP.No.6708/2003, CRP SR No.24532 of 2012 is filed under S.91 of the Tenancy Act on 5.9.2012 by legal representatives of one Gadda Shanker and one Gadda Krishna (alleged protected tenants) against the order dated 9.12.2003 in Case No.F2/4903/2002. The petitioners also filed CRP MP No.5812 of 2012 for grant of leave to file the Revision against the order dated 9.12.2003 in Case No.F2/4903/2002; CRP MP No.5813 of 2012 to dispense with filing of the copy of the said order; and CRP MP SR No. of 2012 under S. 5 of the Limitation Act, 1963 to condone the delay of 3100 days in filing the CRP.

Similarly, CRP SR No.24636 of 2012 is filed under S.91 of the Tenancy Act on 6.9.2012 by one Mohd. Ghouse (alleged protected tenant) against the order dated 9.12.2003 in Case No.F2/4903/2002 of the Joint Collector, Ranga Reddy District (allowing the appeal filed by the Authorised Officer, Land Reforms, Ranga Reddy District and setting aside the order in G/3640/96 dated 28.4.2001 of the RDO, Chevella Division, Ranga Reddy District), mentioned above. This petitioner also filed CRP MP No.6283 of 2012 to dispense with the filing of the copy of the said order and CRP MP No.6538 of 2012 under S.5 of the Limitation Act, 1963 to condone the delay of 3079 days in filing the CRP.

6. Heard Sri Vedula Venkataramana, learned Senior Counsel and Sri M.V.S. Suresh Kumar, learned counsel, for the petitioners in C.R.P.No.6708 of 2003, learned Additional Advocate General for the State, Sri B.V.Subbaiah, Sri J.V.Suryanarayana, Sri B.Adi Narayana Rao, learned Senior Counsel and Sri V.L.N.G.K.Murthy, Sri M.V.Durga Prasad, P.Venugopal, Sri K.Srinivas, Sri

E.Ajay Reddy, Sri Ch.Durga Prasad, Sri P.Anil Kumar and Sri C.Hanumantha Rao, learned counsel for the respondents.

7. Apart from oral submissions, counsel also submitted elaborate written arguments in support of their respective contentions. Counsel referred to several provisions of the Ceiling Act, the Tenancy Act, the AP Urban Areas (Development) Act, 1975 and referred to a number of cases decided under the said Acts in support of their respective contentions. To the extent relevant, the same would be referred to and discussed infra.

B. CONTENTIONS OF PARTIES

(a) Contentions of Counsel for the Petitioners in CRP.No.6708/2003 :

8. Sri Vedula Venkataramana and Sri M.V.S. Suresh Kumar for the petitioners in C.R.P.No.6708 of 2003 submitted :

(i) that protected tenancy of the revision petitioners is not disputed or denied by the respondents in CRP.No.6708/2003 who filed appeals against the grant of Certificates under S.38A of the Tenancy Act; in fact the case of the appellants before the Joint Collector in the appeal F2/4902/2001 is that they became owners of the land under sale deeds which were executed by Kastopa and some protected tenants during the year 1986 – 87; the recitals in the sale deeds relied upon by the respondents also admit and acknowledge that the revision petitioners are protected tenants and that the procedure in S.38-D of the Tenancy Act had been followed; that the grant of certificates u/s.38-E to the same persons has become final; and that applications were filed for certificates under S. 38A by the same persons for the remaining land. The revision petitioners

are thus admittedly protected tenants or their successors.

(ii) that the grant of S. 38A Certificates is in compliance of one part of the order in W.P.No.4059 of 1982 which became final in W.A.No.1420 of 1987 and hence it is not now open for the respondents in CRP.No.6708/2003 to contend that the revision petitioners are not protected tenants of the land.

(iii) that the finding of the Joint Collector in the impugned order dated 09-12-2003, that the protected tenants are deemed to have relinquished their protected tenancy rights by being parties to the sale deeds executed in favour of R-8 to R-17 and 588 members of Diamond Hills Welfare Association is contrary to law, not only since the mandatory procedure under S. 19 of the Tenancy Act was not followed but also because S.48-A of the Act prohibits a protected tenant who had obtained a right of ownership under S.38, 38-D or 38-E of the Act from alienating such land within 8 years from the date of acquisition of such right.

(iv) that the sample sale deed dated 28-07-1987 filed by the parties
(whereunder Kastopa and some protected tenants sold a plot in
S.No.53 of Gachibowli village) contains recitals that "vendors No.2" mentioned therein were declared as protected tenants under S. 37-A of the Tenancy Act in respect of lands covered by Sy. No.35 to 37, 40, 42 to 47 and 50 to 53 of Gachibowli village; that similar sale deeds allegedly executed by Kastopa are relied upon by respondents 8 to 72 in support of their claims to the lands in Sy. Nos.50 to 53; that as the sale deeds do not contain any recital that protected tenancy rights were surrendered or relinquished by protected tenants, the Joint Collector could not have held that there was such relinquishment.

The procedure mandated in S. 19 of the Tenancy Act is non-derogable and there cannot be any surrender of protected tenancy rights *dehors* the said provision of law. They relied upon **Sada and etc. vs. The Tahsildar, Utnoor, Adilabad District and Another etc.,**[1], and **Sanjeevayya Nagar Co-operative House Building Society Limited v. S.Malla Reddy @ Parvathalu and Others**[2] for the proposition.

(v) that the directions of the High Court dated 15-07-1987 in W.P.No.4059 of 1982 as confirmed by the order dated 25-01-1993 in W.A.No.1420 of 1987, directing the Revenue Divisional Officer to issue certificates under S. 38-E in respect of Ac.73.03 gts had become final. The grant of certificates under S. 38-E of the Tenancy Act have not been challenged by R-8 to R-72. Therefore issuance of sale certificate under S.38-A is only a consequential act once the landholder and the protected tenants agree to such issuance, and the proceedings wherein S. 38-A certificate is issued to the protected tenants do not involve any adjudicatory process. Therefore, there is no illegality committed by the RDO, Chevella in granting sale certificate under S.38-A of the Act to the protected tenants vide the order dated 28-04-2001.

(vi) that R-8 to R-18 who had purchased parcels of land from Kastopa and some of the protected tenants under sale deeds such as the one dated 28-07-1987 have acquired no rights in law and have thus no *locus standi* to maintain the appeal before the Joint Collector under S. 90 of the Tenancy Act against the order dated 28-04-2001 of the RDO, Chevella granting sale certificate under S. 38-A of the Tenancy Act to the protected tenants. They have to work out their remedy in common law as they are neither tenants nor landholders, entitled to avail the statutory

remedy under the Tenancy Act; and at their instance, the Joint Collector could not have gone into the merits of the case at all.

(vii) that in view of the decision of the Supreme Court in **State of Andhra Pradesh and Another Vs. T.Yadagiri Reddy and Others**[3], the Land Reforms Tribunal while deciding whether the declarant/landholder was a surplus holder of land under the Land Ceiling Act,, has to first decide whether the holding of the landholder includes any land held by a protected tenant u/s.38-E and also lands covered under S. 38-A&B of the Tenancy Act and this has not been done in the present case by the Land Reforms Tribunal when it held that Kastopa/landholder was holding a surplus of 2.2862 S.H.

(viii) that notwithstanding the fact that G.O.Ms.No.183 MA dated 24-03-2000 issued under the AP Urban Areas (Development) Act, 1975 (categorizing the subject lands as falling within “residential use” zone), jurisdiction of the authorities under the Tenancy Act is not eclipsed. They relied upon S. 104 of the Tenancy Act to contend that the said Act and orders made thereunder will over ride anything inconsistent therewith in any other enactment including the notification under the AP Urban Areas (Development) Act, 1975. They also contended that unless a notification is issued under the Tenancy Act specifying any land as being reserved for urban, non agricultural or industrial development as required by S.102 (e) of the Tenancy Act, the land continues to be agricultural land governed by the Tenancy Act and notifications issued under statutes such as AP Urban Areas (Development) Act, 1975 have no bearing. They relied upon the decision in **Mir Sardar Ali and Others Vs. Mandal Revenue Officer, Kesara Mandal, R.R.District and Others**[4] wherein the High Court held that mere

inclusion of agricultural lands within the municipal limits by a government order issued under the Urban Land (Ceiling and Regulation) Act, 1976 would not transform the said lands as urban land to claim the benefit under S.102 (e) of the Tenancy Act. The decision in **Devanath Singh V. Poosu Malliah (died) and Others**[5] was referred to where a similar view was expressed.

(ix) With respect to question No.2 framed by the Supreme Court, it is contended that the enquiry report of the RDO dated 27.07.1981, which is in compliance with orders in W.P.No.4590 of 1980 dated 17.02.1981 was never challenged by Kastopa. The appellants before the Joint Collector, whose order is impugned now, are successors of Kastopa and are bound by the said enquiry report. Further in the appeal, the appellants i.e. M/s. Diamond Hill Association and others had not challenged the said enquiry report and hence its validity did not fall for consideration by the appellate authority. At any rate the report dated 27.07.1981 merged with the orders in W.P.No.4059 of 1982 and hence is incapable of challenge independently.

(x) With respect to question No.3 framed by the Supreme Court, they contend that in view of the above contentions pertaining to questions 1 and 2, there was no valid surrender of protected tenancy rights as per the procedure enjoined by law, contained in S.19 of the Act and hence the protected tenancy would operate against all the survey numbers including those which are the subject matter of the present Revision Petition. They relied on the decisions in **Babu Parasu Kaikadi (dead) by L.Rs. V. Babu (died) Through L.Rs.**[6], **Ramachandra Keshav Adke (dead) by L.Rs. and Others V. Govind Joti Chavare and Others**[7] and

Venkanna and Others v. Pichikuntal Buchamma[8] to urge that the procedure for surrender of tenancy prescribed under the Tenancy Act is mandatory and a surrender of tenancy, even a voluntary surrender by the tenant in violation of the procedure for surrender, is illegal and void.

(xi) With respect to question No.4 framed by the Supreme Court, they contend that the sale of plots from Kastopa and others in 1986/1987 is invalid being violative of S. 30 (1) and S. 38 (4) of the Act and of the Supreme Court judgment in **Kotiah and Another v. Property Association of the Baptist Churches (Pvt) Ltd**[9]. Therefore the purchasers under those sale deeds have no *locus standi* to maintain an appeal against the grant of Certificates under S.38A of the Act. The Joint Collector ought therefore to have dismissed the appeals of M/s. Diamond Hills Welfare Association and others without entering into the merits of the case. The recitals of these sale deeds play a crucial role in this case. As per the recitals, Kastopa offered to sell the land to protected tenants as contemplated by S. 38D but the tenants had expressed unwillingness. The legal effect of S.38D is that such protected tenant would forfeit his protected tenancy rights. If Kastopa had really issued written notices (there is no recital to that effect) and waited for a period of 6 months, it could have attained eligibility to sell the land to third parties and in such an event, the protected tenancy right shall stand forfeited. Hence there is no justification/necessity to join the protected tenant as a co-vendor. Thus the recitals in the sale deed *per-se* demonstrate that the transaction in favour of the purchasers is hit by provisions of the Tenancy Act. Consequently, M/s. Diamond Hills Welfare Association or its members, who acquired no rights under the Act cannot maintain appeal before the Joint Collector against grant of

certificates under S. 38A of the Act. In fact certificates under S. 38A are not in the nature of adjudication proceedings. It is only a record showing the agreement of the landholder who sold the land to the protected tenant at a reasonable price. Since the authority granting certificates under S.38A has not adjudicated any *"Lis",* there cannot be any appeal against such a proceeding and the only recourse available to M/s. Diamond Hills Welfare Association and its members is to file a suit for declaration of their title in the regular civil court, particularly since certificates under S. 38A are not accorded any conclusiveness of title *qua* provisions of the Act. At best members of M/s Diamond Hills Welfare Association may assert that the certificates under S. 38A are not binding on them since they have acquired title at an earlier point of time. Further, members of M/s. Diamond Hill Welfare Association have contended before the appellate authority that Kastopa has "colluded" and thus enabled the protected tenants to get certificates under S. 38A. Such a contention cannot be decided by domestic *fora* under the Act since jurisdiction of the authorities under the Act is governed by the parameters laid down by the Act. Hence the appeal by M/s. Diamond Hill Welfare Association and others should have been dismissed summarily.

(xii) With respect to question No.5 framed by the Supreme Court, it is contended that it is settled law that lands covered by protected tenancy rights are to be excluded from the holding of the land holder/declarant (S. 13 of the Ceiling Act, 1973 enacts such a provision). Further the judicial interpretation of the two Acts is that protected tenancy law takes priority over the computation of land provisions under the Ceiling law. Hence the Land Reforms Tribunal rightly excluded land covered by protected tenancy. In fact this aspect is covered by the

Division Bench Judgment in W.A.No.1427 of 1987 which has become final. Hence this question is to be answered in favour of the protected tenants.

(xiii) With respect to question No.6 framed by the Supreme Court, the Revision Petitioners contended that conversion of land use from Agricultural to non-agriculture/house sites is governed by the A.P. Urban Area Development Act, 1975 (S. 12 of the said Act). S. 102 (e) of the Act states that the Act shall not apply to an area which the Government may by notification specify as being reserved for Urban, Non-agricultural or industrial development. In the present case, there is no such notification. Hence mere conversion of land use does not render the Tenancy Act in applicable. Judgment in **Mir Sardar Ali's case** (4 supra), is directly on the point. At any rate except S. 102 there is no other provision in the Tenancy Act which excludes applicability of the Act to certain lands. Hence change of land use has no bearing on the rights of protected tenants. Only a notification under S. 102 (e) may take away the rights of protected tenant. In the present case there is no such notification and it is not the case of any of the parties that there is any such notification. Hence the subject land is governed by the Tenancy Act.

(xiv) With respect to question No.7 framed by the Supreme Court, they contended that surrender of surplus land by the declarant i.e. Ac. 137.17cts under the Ceiling Act has no impact on rights of protected tenants and this aspect has already been decided by a Division Bench in W.A.No.1420 of 1987 dated 25.01.1993. They relied on the following observations therein:

> "*When the holding of any owner included the land held by a protected tenant, the tribunal shall, in the first instance, determine whether such land or part thereof stands transfer to*

the protected tenant under S. 38E of the Tenancy Act and if so, the extent of land so transfer and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant as if the tenant was the owner of the such land under S. 38E of the Tenancy Act that vesting and transfer of ownership of lands in the protected tenants shall be with effect from 01.01.1973. Therefore by the time the proceedings under the Land Ceiling Act were initiated, the protected tenant had already become the owners by virtue of the statutory declaration. The owners of the land, therefore, cannot surrender the lands held by the respondents under S.38E. As such the proceedings under the Land Ceiling Act dated 09-12-1975 are of no consequence".

Petitioners also referred to **K.Laxmiah vs. The Spl.Tahsildar, LRT East, Hyderabad and another**[10], wherein this Court observed at para 6 :-

"*It is therefore necessary determine whether a lease, in the context of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and in particular in the context of 10 (5) of the said Act r/w. 3 (i) and S.12, constitutes an encumbrance so as to preclude the tribunal from accepting the surrender of the land in possession of a tenant or a protected tenant. The surrender of the land in certain circumstances may have to be made by the landholder and all his lands may be in the position of a protected tenant. If such a landholder is a surplus holder, whatever land he may surrender, it would have been in possession of the protected tenant. If it were to be held that such landholder cannot surrender such land and the tribunal is precluded from accepting the surrender of such land, then the provisions of the Act would be set at naught. The landholder would have to be allowed to continue in possession of his holding even though it may be in excess of the ceiling area. Even in the case of a person whose holding comprises entirely of land held by him as a protected tenant, the surrender of any land cannot be accepted but since the Act contemplates the surrender of all lands held in excess of the ceiling area the land held on lease must also be capable of being surrendered and that can be done only if lease does not constitute an encumbrance on the land. No doubt S. 11 contemplates vesting of land free from encumbrances and S. 14 contemplates*

the disposal of the land vesting in the government by way of distribution of such land. If lease does not constitute an encumbrance, there could be no objection to such land being accepted by way of surrender and such land would also vest in the government. As lease is not an encumbrance, the vesting of such land in the government will not deprive the tenant of his right to hold the land. The Land Reforms (Ceiling on Agricultural Holdings) Act, does not seek to deprive possession to the actual cultivators of the land so long as their holding is within the ceiling area to which they are entitled. If the land is surrendered by the landholder and such land is in possession of a protected tenant, the landholder's interest therein would vest in the government. On such surrender, the tenant who was a tenant of erstwhile landholder would now been tenant of the Government. If the lands is surrendered by the protected tenant, it would first vests in the landholder and only if the landholder thereby become a surplus holder, he would be require to surrender the excess but not necessarily the land surrendered by the protected tenant. As rights of the protected tenants are not sought to be disturbed by the land reforms Act, the protected tenant – petitioners herein would continue as protected tenants of the government. I therefore see no reason to disturb the finding of the Tribunal accepting the surrender of land, it is how ever made clear that since the petitioners are protected tenants of the land and tenancy does not constitute an encumbrance and acceptance of surrender is valid, the petitioners cannot be deprived of their holding and the possession. In this case unless the protected tenants are holding the land in excess of the ceiling area to which they are entitled, they cannot be dispossessed of such land. The petitioners, therefore, as a result of acceptance of surrender by the landholder shall not be dispossessed from the land. The surrender of the land shall be accepted but the petitioners shall not be dispossessed from the land. Evidently that is what the appellate tribunal also intended in declaring that the protected tenants would be entitled to be work out their rights under the Tenancy Act"

Reliance is also placed on **T.Yadagiri Reddy's case** (3 supra) wherein the Supreme Court, at Para 56 after extracting S.13 of the Ceiling Act, held :-

"It will be seen from the language that the tribunal has to decide the extent of the land transferred under S.38E as a first duty and then to exclude such land. The use of the words "in the first instance" only suggests that the first finding that the tribunal has to given is about the land covered under S.38E of the Tenancy Act. However the Section nowhere provides that the tribunal does not have to decide about the lands covered under S.38B of the Tenancy Act."

According to the petitioners, in the present case while granting certificate under S.38A, the primary authority i.e., the RDO has recorded that the agreement between Kastopa and protected tenants is dated 20.03.1970 and therefore the Supreme Court Judgment which deals with certificates under S.38B of the Act has complete application to the present *lis*. The vesting of the land in the State has therefore no effect in so far as rights of the protected tenants are concerned.

(xv) With respect to question No.8 framed by the Supreme Court, it is contended that the submissions in respect of question No.7 cover this question also.

(xvi) With respect to question No.9 framed by the Supreme Court, they contended that in it's order dt.20.9.1999 in W.P.No.14708 of 1999 this Court held as follows:

"The writ petition is disposed with consent of parties with a direction that respondent No.1 shall dispose of the application under S.38A in File No.G/3640/1996 in respect of the lands in Sy.Nos.46, 47 and 53 (Paiki) to the extent of 37 acres situated at Gachhibowli Village, Ranga Reddy District within two weeks from the date of receipt of a copy of this order. Parties agree that no adjournment will be sought and even if sought the authorities can pass orders without hearing the parties."

It is submitted that the above order had not determined the rights of the parties. Hence no estoppel or waiver can be attributed to the parties for changing the

Sy.Nos. from 46, 47 and 53 (Paiki) to 51, 52 and 53 (Paiki) in respect of which certificates under S.38A were issued. Petitioners submitted that it is improper to read the above extracted order as a consent order in respect of the descriptive particulars of the land.

(xvii) With respect to question No.10 framed by the Supreme Court, they contended that the revision petitioners (respondents in Supreme Court) are entitled to certificates under S. 38A of the Act since their protected tenancy was never in dispute and orders in W.P.No.4059 of 1982 confirmed in W.A.No.1420 of 1987 have directed consideration of issuance of Certificates u/s.38-A for the balance land. Petitioners contended that some of the purchasers who are sailing with M/s. Diamond Hill Welfare Association filed SLP.No.36770 of 2010 against the judgment in W.A.No.1420 of 1987 but withdrew the same with liberty to raise all the questions before the High Court subject to just exceptions. Thus it is beyond dispute that the revision petitioners are protected tenants and by reason of agreement with Kastopa and others, they were rightly issued Certificates under S. 38A of the Act for the land admeasuring Ac.37-17 guntas in Sy.Nos.51, 52 and 53 (Paiki) of Gachhibowli Village, Ranga Reddy District.

(xviii) that the petitioners could not file Civil Revision Petition challenging the order dated 09-12-2003 in Case No.F2/4903 of 2002 on the file of the Joint Collector, Ranga Reddy District [allowing the appeal filed by the Authorized Officer (Land Reforms), Ranga Reddy District against the order dated 28-04-2001 in Case No.G/3640/96 and setting aside the sale certificates under S. 38-A granted to the petitioners in respect of Ac.37.16 gts in Sy.Nos.51 to 53 of Gachibowli village issued by the RDO, Chevella] on account of “a pure mistake” which was bonafide and therefore have filed C.R.P.S.R.Nos.24532 and 24636 of 2012 with applications for leave to file revisions; to dispense with the

filing of certified copy of the impugned order and to condone delay of 3100 and 3079 days respectively in filing the revisions ; and that the said prayers be granted and the C.R.Ps. be taken on file, numbered and allowed.

(xix) that only one sale deed dated 28-07-1987 was filed by the respondents 8 to 18 in C.R.P.No.6708 of 2003 before the Joint Collector, Ranga Reddy District in the appeal filed by them; that several other sale deeds which are more than 500 in number were not filed; and unless R-8 to R-72 prove that they acquired title under registered sale deeds and file such sale deeds, their claims cannot be believed, particularly when the petitioners in C.R.P.No.6708 of 2003 deny execution of the sale deeds in favour of the latter. Therefore the plea put forward by R-8 to R-72 in C.R.P.No.6708 of 2003 requires to be rejected.

(xx) that revision petitioners 7-11 in CRP No.6708 of 2003 are not parties to the sale deeds executed by Kastopa and other alleged protected tenants. In view of the fact that it is a joint protected tenancy; as some of the protected tenants such as petitioners 7 to 11 are not parties to the sale deeds executed by Kastopa between 1986-87, the said sales are void. It is also alleged that vendors 12,14,16,17,19 to 24 in the sale deed dated 28-7-1987 are strangers and not protected tenants. They therefore contended that the sale deeds under which R-8 to R-72 claim rights in the land purchased by them are of no value, have to be ignored and that they have no *locus standi* to file the appeal before the Joint Collector.

(xxi) that the sale deed dated 28-07-1987 refers to a plot of 267 sq. yds. of land being sold i.e. the land was sold as “urban land” and not as “agricultural land” and therefore the parties to such sale deeds tried to circumvent the provisions of the Tenancy Act by projecting as if the land

is not agricultural land.

(xxii) that one of the appellants before the Joint Collector was the Diamond Hills Welfare Association consisting of 588 members, each of whom claims to have purchased a plot of land from Kastopa under a registered sale deed. There is no evidence to show that the Association has any proprietary interest in the subject land. The said association has not pleaded that it is a cooperative society registered under the AP Cooperative Societies Act, 1964. If the said Association is registered under the Societies Registration Act, 1860, it is not a corporate body having a juristic personality authorized to file an appeal before the Joint Collector. It is also contended that the said Association did not seek leave to file the appeal before the Joint Collector and was disentitled to file the appeal without pleading that it has interest in the land, as such the appeal by the Association before the Joint Collector was not maintainable.

(xxiii) that persons who got impleaded in C.R.P.No.6708 of 2003 (by filing applications for such impleadment in this Court) cannot be granted any relief in the revision petitions as they had not challenged the order dt.8-04-2001 of the Revenue Divisional Officer, Chevella Division, granting sale certificates under S. 38-A of the Tenancy Act, by filing an appeal under S. 90 of the said Act before the Joint Collector.

(xxiv) that since the scheme of the Tenancy Act is to regulate the relationship between landholders and tenants and has no application to determining rights *inter-se* between persons asserting competing rights to ownership to a particular land or a dispute between an owner and trespasser or a person otherwise than as a tenant; and as R-8 to R-72 are not landholders, any dispute between them and protected tenants cannot be

decided under Tenancy Act provisions and ought to be decided only by a Civil Court. Reliance is placed on the decision in **Sharfuddin V. Sama Yelluga**[11] **and Itikala Venkatramayya V. Kommu Guruviah and Others** [12].

(b) Contentions of the Additional Advocate General for the State/ Petitioner in CRP.No.1200/2003 and for Respondents 1-7 in CRP.No.6708/2003 :

10. The learned Additional Advocate General submitted as follows:

(i) Effect of concluded ceiling proceedings :

All subject lands were part of the declaration filed on behalf of Kastopa under the Ceiling Act vide declaration in CC No.N/264/75; the declaration was processed by the Verification Officer and considered by the Land Reforms Tribunal; the Tribunal determined that the declarant holds surplus lands to an extent of Ac.2.2862 SH; this order was challenged before the Appellate Tribunal in LRA No.10/1976; the appeal was dismissed; the matter was carried in revision before this Court vide CRP SR No.24689 of 1976, which was also dismissed, on 28.4.1976 . Therefore, the computation of the declarant's holding by the Tribunal became final and final proceedings were issued treating the declarant as a surplus holder. On such declaration, the land vested in the State free from all encumbrances. In fact, a surrender statement was also filed by the declarant on 5.5.1976 and the same was accepted by the Tribunal after the completion of all formalities. The proceedings have attained finality. There is no provision under Ceiling Act enabling reopening of a matter which had attained finality. He relied upon the decisions in **Kishandas Kanhaiyalal Gandi vs. State of Maharashtra and Another**[13], **Ujagar Singh and Others v. State of Punjab and**

Others[14], **Konda Venugopala Raju Vs. State of Andhra Pradesh**[15], **Ponnam Chandrasekhar Rao and Others vs. State of A.P. and Another**[16], **Merla (Bolla) Jogayamma and Another vs. State of Andhra Pradesh rep. by the Authorised Officer, Land Reforms, Kakinada**[17], **Premier Tyres Limited Vs. Kerala State Road Transport Corporation**[18], **Harbans Singh and Others vs. Sant Hari Singh and Others**[19], **General Manager, South Central Railway, Rail Nilayam, Secunderabad and Others v. D.Vijayalakshmi and Others**[20], **Bar Council of Andhra Pradesh v. Kurapati Satyanarayana**[21], **Laxama Reddy and others v. The State of Andhra Pradesh**[22], **Collector/Agent to the Government, Khammam District vs. Bhadrachalam Division Lorry Owners Association**[23], **K.Narasimha Reddy and others v. State**[24], **Y.Lalithamma vs. The Special Tahsildar, Land Reforms, Kurnool**[25] and **S.S.Bola vs. B.D.Sardana**[26].

(ii) It may be that while dismissing W.A.No.1420 of 1987 by the order dated 25.1.1993, this Court observed that land ceiling proceedings were not binding on the S.38E certificate holders for the reason that by the time the proceedings under the Ceiling Act were initiated, protected tenants had already become the owners by virtue of the statutory declaration. However, in the instant case, the certificates issued by the Revenue Divisional Officer are U/s.38-A recognizing the purchase of the rights of the landlord by the tenants. This certification does not amount to a statutory transfer

contemplated u/S. 38-E.

(iii) The petitioners before the Primary Tribunal, before getting their purchase rights recognized u/s.38-A have to plead and produce evidence (such as documentary evidence like the copy of the final record of tenancy issued by the competent authority) that they are protected tenants; they have to establish that they are in continuous possession of tenancy lands; and that there was an agreement fixing the reasonable price agreed between the land holder and the tenant. Only on fulfilling the above three conditions, may tenants apply before the Primary Tribunal. In the instant case, no such enquiry was conducted by the Tribunal on the above three aspects. The Primary Tribunal perfunctorily ,without recording any finding on the status of the petitioners before the Primary Tribunal about their alleged protected tenancy and the veracity/genuineness of the unregistered sale deeds, solely relying on the statement of the land lord (who had originally disputed before RDO at the initial stages that there is a tenancy at all and who later backtracked and gave a statement for the first time before the Primary Tribunal accepting an unregistered sale deed), had erroneously issued S.38A certificates. It is also contended that persons who obtained S.38A certificates have no connection with the tenants identified by the R.D.O in 1981.

(iv) The Primary Tribunal under the Tenancy Act has no jurisdiction to issue certificates U/s.38-A of the Act in view of the Notification issued by the Government under the A.P. Urban Areas (Development) Act, 1975 vide G.O.Ms.No.813 dated 24.3.2000 designating the subject property as Residential use zone, which was earlier earmarked for Conservation and Recreational and Tourism Use Zone. In view of provisions U/s.102(e) of the Tenancy Act exempting the applicability of the Act to

lands where the Government issues notification reserving the lands for urban and non-agricultural or industrial development, the Tenancy Tribunal ceases to have jurisdiction in respect of the subject lands as the Act itself does not apply.

(c) Contentions of Sri B.V.Subbaiah and Sri J.V.Suryanarayana, Senior Counsel for the respondents:

11. (i) The present lis in CRPNo.6708/2003 is confined to an extent of Ac.37.15 gts. in Sy. Nos.51, 52, 53 of Gachibowli village and more than 588 sale deeds were executed by Kastopa with some of the protected tenants as parties in respect of the above land and also the land in Sy. No.50 of the said village wherein there is a sanctioned layout in an extent of Ac.59.24 gts.

(ii) In ground Nos. 4, 6 and 19 of the grounds of appeal filed before the Joint Collector, Ranga Reddy District (challenging the order dated 28-04-2001 of the RDO, Chevella in proceedings Ref. G/3640/96 dated 28-04-2001) respondents herein (appellants in that appeal) had specifically asserted that there were no tenants at all over the lands in Sy. Nos.50 to 53 part of Gachibowli village as per the final record of tenancy which is the permanent record; that the RDO, without conducting a proper statutory enquiry which is mandatory, could not have held that the petitioners in C.R.P. No.6708 of 2003 were entitled to a certificate under S. 38-A of the Act.

(iii) Although this Court in its order dated 17-02-1981 in W.P.No.4590 of 1980 had directed the RDO to conduct enquiry as to (a) whether the petitioners in the said writ petition were declared as protected tenants of lands in Sy. No.46, 47 and if so, under what provision; and (b) whether petitioners or any of them or their predecessors in interest

surrendered their tenancy rights according to law and if so, which of them, when and in which proceedings, the said official is not conferred any jurisdiction under the Tenancy Act to decide the said issue. Therefore the alleged protected tenants who are petitioners in C.R.P.No.6708 of 2003 could not have relied on any findings therein, in subsequent proceedings i.e. W.P.No.4059 of 1982, W.A.No.1420 of 1987, W.P.No.3251 of 1998, W.P.No.14708 of 1999 or before the Land Ceiling Authorities. Since the orders passed in the above proceedings place reliance on the unauthrized report of the RDO, no weight should be attached to orders passed in those proceedings.

(iv) In any event the RDO in his report dated 27-07-1981 had found that only Khanamet Balaiah, Manikonda Kondaiah, Darlapalli Babaiah and Gadda Mysaiah were found to be protected tenants in the tenancy record of 1958 prepared under S. 37-A of the Act and the other petitioners in the said W.P.4590/1980 were found to be not the protected tenants. Therefore, petitioners in the C.R.P.No. 6708 of 2003, other than persons claiming through the above four protected tenants are disentitled to any relief in the Revision.

(v) The report of the RDO dated 27-07-1981 in Ref.G/1565/81 contains several observations about tampering of some of the revenue records and their suspicious nature. Therefore this Court should direct the State to produce the tenancy records maintained by it under the Tenancy Act, examine them and determine as to who were the protected tenants under S.37-A of the Tenancy Act. Some of the respondents filed C.R.P.M.P.No.5747 of 2012 in C.R.P.No.6708 of 2003 to call for the tenancy registers of 1951 and 1958 prepared under S. 34 and S.37-A of the Tenancy Act and also the Seshala pahani for 1955-58 in respect of lands in Sy.

No.35 to 37, 40, 42 to 47, 50 to 53 of Gachibowli village. Counsel pointed out that in the order dated 17-02-1981 in W.P.No.4590 of 1980, this Court had clearly stated that the register of protected tenants prepared under S. 37-A of the Act was not placed before it. This Court exercising jurisdiction under S. 91 of the Tenancy Act is entitled, by virtue of S. 92 of the said Act read with S. 89 to exercise all or any of the powers conferred on a Civil Court by the Code of Civil Procedure, 1908 and therefore it should summon the above documents/records from the custody of the State and examine them in order to do justice to the parties. Whether Gadda Balaiah and others (who are petitioners in C.R.P.No.6708 of 2003) are protected tenants or not is a jurisdictional fact and if they are not proved to be protected tenants, then the order of the RDO granting them sale certificate under S. 38-A of the Act is clearly unsustainable.

(vi) The subject lands have became non-agricultural lands on account of G.O.Ms.No.183 MA dated 24-03-2000 issued by the State under the A.P. (Urban Areas Development) Act, 1975. The Tenancy Act therefore ceases to apply from that date and the RDO could not have granted certificate under S. 38-A thereafter.

(d) Contentions of Sri V.L.N.G.K.Murthy and Sri M.V.Durga Prasad, Counsel for other respondents:

12. Counsel broadly contended as follows:

(i) The Ceiling Act overrides provisions of the Tenancy Act, in view of S. 3 (i), 3 (k), 3 (t) read with S. 13 and S. 28 of the Ceiling Act.

(ii) In view of S. 13 of the Ceiling Act, powers of authorities under S. 38-E the Tenancy Act are divested and exclusively vested in the Land Reforms Tribunal.

(iii) In view of S. 13 and other provisions of the Ceiling Act, the Land Reforms Tribunal (for short "LRT") has exclusive jurisdiction in respect of all matters, which may arise in determination of the ceiling limit in respect of the lands covered by the Ceiling Act, to the exclusion of all other courts and tribunals. Alternatively, even if the Tribunals under both the Acts have concurrent jurisdiction, once the LRT exercises jurisdiction under S. 13 of the Ceiling Act read with S. 38-E of the Tenancy Act, the jurisdiction stands exercised and the coequal jurisdiction under the tenancy Act is exhausted.

(iv) Determination of holding under the Ceiling Act and surrender of excess to the tune of 137 acres and vesting thereof in the State has attained finality and cannot be reopened.

(v) Assuming that there was a valid reopening of the Land Reforms proceedings, the proceedings must be deemed to be pending attracting the bar of alienations under the Land Ceiling Act. All provisions enabling transfer of ownership from the landholder to the tenant under the Tenancy Act, other than S. 38-E are hit by S. 7 read with S. 17 of the Ceiling Act. Consequently, jurisdiction under the Tenancy Act is wholly eclipsed by provisions of the Ceiling Act in respect of the land falling to be determined under the Ceiling Act.

(vi) S. 38 & S.38-A of the Tenancy Act are subsumed by the Notification under S. 38-E of the Tenancy Act. Therefore no right survives under these provisions after the Notification under S. 38-E is issued by the State.

(vii) None of the orders passed, in W.P.No.4590 of 1980, W.A.No.1420/1987, W.P.No.4059 of 1982, W.P.No.14708 of 1999 and C.R.P.No.3755 of 1997 enable or entitle the

petitioners in C.R.P.No.6708 of 2003 to obtain 38-A Certificate. Applications under S. 38-A and S.38-B must fail on account of incurable infirmities.

(viii) In view of the finality of the order of the LRT dated 31.05.1975, rejecting the application under S. 38-E, all subsequent proceedings for the same relief are barred by res-judicata.

(ix) In view of S. 102 (e) of the Tenancy Act and the notification issued under the A.P.Urban Areas (Development) Act, 1975, constituting Gachibowli as urban area for urban development, the Tenancy Act ceased to be operative in respect of Gachibowli village. At any rate, after the modification of the Master Plan in respect of the lands *inter-alia*, in Survey No.52 to 53 covered by the layout, provisions of the Tenancy Act cannot have application and all orders passed under the Tenancy Act are *void ab-initio*, being *quorum non-judice*.

(x) Revisional power may not be exercised in favour of persons in these proceedings to defeat provisions of the Ceiling Act as any interference may result in restoration of *ex facie* illegal orders.

(xi) Rights conferred on protected tenants under S. 38, S. 38-A, S.38-E, etc., are essentially individual. Hence, a composite application for ownership certificate by several persons claiming to be protected tenants, without disclosing their individual eligibility is incompetent, not maintainable, and the consequent order granting the same is without jurisdiction and unenforceable.

(xii) Sales by Kastopa of plots in the retained area in Survey No.50 to 52 and 53/p, after the conclusion of proceedings under the Ceiling Act are valid and are not affected by S. 38-D, even assuming without admitting that

the Vendor No.2 therein were protected tenants and execution of the sale deeds by them is not proved.

13. They elaborated the above submissions as under:

a) Ceiling Act has overriding effect over Tenancy Act:

(i) The Ceiling Act is subsequent to the Tenancy Act and S. 28 of the Ceiling Act gives overriding effect to its provisions against any existing law.

(ii) In view of S. 3 (i) (iv), a person holding land as a tenant is covered by the Ceiling Act. S.3 (t) includes a person who is deemed to be a tenant under any Tenancy Law for the time being in force (last part). The Ceiling Act also extinguishes the right, title and interest of the tenant in the same manner as it extinguishes that of a landholder. Both are subject to the same ceiling limit and determination thereof and to the same restrictions and disabilities including those under S. 7 and S.17 of the Ceiling Act.

(iii) The object of the Tenancy Act is only to regulate the *inter-se* relationship of the landlord and tenant and has a limited socio-economic object compared to the Ceiling Act, which is meant for greater good of greater number of people to whom excess land above the ceiling limit is to be distributed by the State. The State is enjoined statutory obligations under the Ceiling Act, which cannot be abdicated or abandoned. Hence, provisions of the Ceiling Act have overriding effect over the Tenancy Act provisions.

(iv) It was submitted for the petitioners that both the enactments have non obstante clauses but that in view of the fact that the two legislations operate in different fields the Ceiling Act has no overriding

effect. This contention is not tenable since Section 38-A only recognizes the private right of parties to sell and purchase and this facilitation is dependent upon volition of the parties unlike Section 38-E. The expressions, “landholder consents to sell” and “agreed between them” occurring in the first part of S.38-A are crucial. Accepting the contention of the petitioners would amount to giving an overriding effect, not to a legislative provision, but to a contractual device (albeit authorized by the Tenancy Act) over another legislative provision. In such case, the claim to primacy is not between two legislative provisions but between a legislative prohibition and a private contract that requires the sanction of a statutory authority. Normatively the contractual freedom must necessarily yield to express statutory prohibition.

(v) Hence, the protected tenant is covered by the Ceiling Act and bound by the Ceiling Act, including S. 4 prescribing the ceiling limit, S. 7 and S.17, prohibiting or invalidating certain transfers, either before or after commencement of the Ceiling Act till the determination of the holding and taking possession of the land in excess of ceiling limit and publication of notice under S. 16. S. 13 clarifies the position by expressly conferring the power to determine whether any land, if so, what extent of land had been transferred to the protected tenant under S. 38-E; and exclude the same. In the absence of such provision, the land would have been included in the holding of both the landholder and tenant by virtue of the explanation to S. 3 (i) and consequences under S. 12 would inexorably have followed.

b) S. 13 of the Ceiling Act transfers the jurisdiction under S. 38-E of Tenancy Act to the LRT:

(vi) S. 13 mandates that in case the holding of any owner includes any land held by a protected tenant, the Tribunal shall in the first instance determine whether such land or part thereof stands transferred to the protected tenant under S. 38-E, if so the extent so transferred and exclude such land from the holding of the owner. This is the function of the Tribunal under the Tenancy Act under S. 38-E (2) thereof.

(vii) Though the Revenue Divisional Officer is constituted a Tribunal under both Acts, Additional Revenue Divisional Officers were appointed as Tribunal under the Ceiling Act. The constitution, powers and functions under both the Acts are distinct and the appointment is by way of notification under the respective Acts.

(viii) In view of S. 13 of the Ceiling Act, powers under S. 38-E of the Tenancy Act are no longer exercisable by the Tribunal under the Tenancy Act ,as such power is exclusively vested in the LRT under Ceiling Act. The Legislative intention in conferment of exclusive jurisdiction on the LRT is to be gathered from the fact that the LRT is enjoined to determine the questions under S.38-E “in the first instance”. The LRT is not required to await the decision of the Tenancy Tribunal. True, the LRT cannot issue a certificate of sale, but that circumstance does not dilute the effect of vesting of jurisdiction in the LRT, as the act of issuing certificate is purely ministerial and consequential to the decisions of the LRT.

c) LRT has exclusive jurisdiction in all matters:

(ix) It is settled law that when a statutory authority is entrusted with the power to discharge a particular function, it shall have all incidental powers required for discharge of such function even if such incidental powers are not expressly conferred. This aspect is settled in **T.Muniswami Naidu v. R.Venkat Reddi** [27], which was approved by the Supreme Court in **Maddada Chayanna vs.Karnam Narayana**[28]. In para 7 **T.Mumniswami Naidu** held :

"In this connection we may quote the observations of Subba Rao, Chief Justice, who said as follows in ***Appanna v. Sriramamurty*** *(1958(1) Andh WR 420):*

"Where a special tribunal, out of the ordinary course is appointed by an Act ***to determine questions as to rights which are the creation of that Act, then except so far as is otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive****. Under the Act, old rights were abolished and new rights were created. A lawful ryot is entitled to a patta. When a question arises whether a person is a lawful ryot or not, that question falls to be decided by the special Tribunal created by the Act." (emphasis supplied)*

(x) Accordingly, the LRT has the exclusive jurisdiction to decide all questions that arise in determination of the ceiling limit, i.e., whether there is any protected tenant in respect of the land in question; whether there is any surrender by the protected tenant, whether the compromise entered or the surrender by the protected tenant may be accepted, etc. Otherwise, it will lead to an anomalous position as will render provisions of the Ceiling Act dys-

functional. In a particular case, multiple questions may arise, like whether a particular person is a protected tenant or not, whether his adoption is valid or not, whether a particular land is agricultural land or not, etc. Such questions in the normal course have to be decided only by the civil court, Tahsildar under the Tenancy Act and the Collector under the Land Revenue Act respectively.

(xi) As already submitted, all such questions fall within the jurisdiction of the LRT in view of S.7 (7) of Ceiling Act. Even otherwise, it would be incongruous to assume that the LRT shall not decide these questions in the absence of a specific provision in the Statute and must relegate the parties to have it decided before the appropriate forum under general law and keep the ceiling proceedings in abeyance till all such questions are fully and finally determined by the hierarchy of the authorities or courts. In such case, it would be easy for anybody to raise these questions and have proceedings before the LRT stalled for an indefinite period. Such a course would make the Act unworkable and defeat the affirmative and social objectives of the Act.

d) The compromise before the LRT is competent, final and cannot be reopened:

(xii) Even assuming without admitting that questions regarding surrender or validity of the compromise arose before the LRT in determining the holding of the declarant, proceedings of the Tribunal cannot be held to be invalid or incompetent on the ground that such powers are vested in the Tahsildar under S. 19 of the Tenancy Act. These questions, so long as these are incidental to determination of the holding under the Ceiling Act, are within the exclusive

jurisdiction of the LRT . If the Tribunal relegates these aspects, for determination to a forum under other Acts or the general law, it would amount to abdication of a legislatively conferred jurisdiction by the LRT. Further, fora under the general law or other Acts have no power whatsoever to deal with questions arising out of proceedings under the Ceiling Act and their decision is not binding on the LRT, in view of S. 17 (3) of the Ceiling Act. Above all, the compromise proceedings and dismissal of the application under S. 38-E and consequent determination of the ceiling limit have all become integrated and merged and became final under the Ceiling Act. Determination of the ceiling and entitlement under S.38-E are inseparable and cannot be reopened in any manner.

(xiii) Assuming that the jurisdiction of both Tribunals is concurrent, since the LRT has passed the order dated 9.12.1975 which stood confirmed in appeal and revision and consequently became final under the said Act, the said order cannot be ignored or reopened by the Tenancy Tribunal, exercising its jurisdiction.

Ceiling Act forecloses rights and remedies under Tenancy Act :

(xiv) Under S. 13 of the Ceiling Act, the jurisdiction to make an enquiry and to ascertain entitlement of the Protected Tenant and the extent of land which statutorily stood transferred to the Protected Tenant, is conferred on the LRT. In view of the express language obligating the LRT to first determine these questions, the jurisdiction of the Tenancy Tribunal is *pro tanto* excluded. Even assuming there is a concurrent jurisdiction, during proceedings before

the LRT, protected Tenants invoked the jurisdiction, filed a petition under S.13 and the matter ended in a compromise whereunder the Protected Tenants gave up their claims. Thus the jurisdiction under S.38E having been exercised by the LRT, the Tribunal under the Tenancy Act has neither a residual or further jurisdiction to exercise, under S.38E.

(xv) This Court in WP No.4095 of 1982 as confirmed in appeal, directed a Tribunal having no jurisdiction, to issue a S.38E certificate. Since the question relates to lack of inherent jurisdiction, constructive res judicata does not apply.[29]

(xvi) Kastopa was declared a surplus holder to the extent of 2.2862 SH, by the Order of the LRT dated 9-12-1975. The appeal there against in LRA 10/1976 was dismissed by the order dated 6-4-1976. A revision, CRPSR 24698/1976 was also dismissed on 28.4.1976.

Finality renders all other proceedings *coram non-judice* :

(xvii) S. 20 (3) of the Ceiling Act declares that the order of the Appellate Tribunal shall be final subject to revision under S.21. In this case, on dismissal of C.R.P.S.R.No.24698/1976 on 28.4.1976, proceedings under the Ceiling Act have attained an irreversible finality. There can be only one finality under the Act. Once the order of the LRT became final, it bars the jurisdiction of the machinery under the Ceiling Act as well as other Acts including the Tenancy Act in respect of the same subject matter. If it is final, proceedings cannot be reopened in any

manner and under any law. Even if factually reopened, such proceedings are without inherent jurisdiction and the consequent orders *non-est*.

(xviii) The Supreme Court in **Gyanmandir Mahavidhyalaya Samity vs. Udailal Jaroli**[30] ruled that finality makes further proceedings *coram non-judice*.

(xix) Therefore, after the proceedings under the LR Act became final on dismissal of CRPSR No.24698/1976, all orders obtained to reopen the same in W.P.No.4509/1980 or W.P.No.4059/1982, having been without jurisdiction, would not operate as res judicata and the question of finality of such orders cannot arise vide **Ashok Leyland V. State of T.N., Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani, Official Trustee of West Bengal v. Stephen Court Ltd., Hasham Abbas Sayyad v. Usman Abbas Sayyad and Muthavalli of Sha Madhari Diwan Wakf v. Syed Zindasha**[31].

Reopening of Land Reforms case is in gross abuse of the process of court and to defeat provisions of the LR Act :

(xx) Armed with the certificate under S. 38E, the declarant (not the 38-E holder) filed a petition on 1-4-1996 before the LRT to reopen the case and to make detailed enquiry under Sec. 13 of the LR Act and to dispose of the case in the light of the order in WA 1420/1987. *No notice was issued to the purchasers at any stage of the reopening proceedings*.

(xxi) On 31-7-1996 the LRT reopened the case. The

Authorised Officer filed LRA 89/1996 against reopening of the case. Gadde Balaiah and 19 others got themselves impleaded in the appeal. The appeal was allowed on 31-7-1997. The declarant filed CRP 3755/1997 impleading persons claiming to be Protected Tenants. At the hearing, the declarant reported that he had no objection for recognizing rights of the protected tenants which were upheld in W.A.No.1420 of 1987.

(xxii) This Court by its order, dt.6-11-1998 in CRP.No.3755/1997 directed as follows:

"*The petitioner has no objection for recognizing the rights of the protected tenant which were upheld in Writ Appeal No.1420 of 1987. This order shall not be construed as enabling any authority to re-open the proceedings already concluded in respect of the rights of the protected tenants. The Potekharab lands in Sy.Nos.37, 40, 42 to 47 and 51 to 53 situated at Gachibowli village, Serilingampally Mandal, R.R.District shall also be excluded for the benefit of the tenants as well as petitioner. With respect to the remaining lands wherever potekharab lands are there as per the revenue records, benefit shall be given to the petitioner and these lands shall be excluded from the computation. In the light of the order, the holding of the declarant shall be recomputed. The order under revision is accordingly set aside".*

(xxiii) The reopening of proceedings is neither valid nor binding on the purchasers since (a) No notice was issued to them and (b) it was done based on an order of a Tribunal *coram non judice*.

(xxiv) Pursuant to the order dt.6.11.1998, the LRT reopened the case and recomputed the holding as an excess of 0.6236 SH, by excluding the land

covered by S.38E certificate and potkharab lands vide its order dated 18-2-1999.

(xxv) Consequent upon this re-determination, a second occasion arose for surrender. Now the declarant sought to surrender lands in S.No.50 to 53 part. M/s. Diamond Hills Welfare Association filed objections. Thereupon the declarant filed a statement expressing willingness to surrender the lands under Sy.No.s 46, 47 part and 53 paiki admeasuring Ac.37. The LRT accepted the surrender of these lands by its order dated 26-5-1999. **This is a second surrender.** Writ Petition No.14708 of 1999 was filed aggrieved by the order, dt.26-5-1999 passed by the Revenue Divisional Officer cum LRT.

(xxvi) In this Writ Petition, in paragraph 9 of the affidavit, the petitioners therein stated that an order whereby the declarant was allowed to surrender land in Sy.nos.46, 47, 53 paiki was bad on the ground that their claims for S. 38A and S. 38B certificates were pending. The prayer was to declare the action of the LRT in not considering their tenancy rights in respect of survey numbers 46, 47 and 53 as illegal. A further direction, *by way of an interlocutory application*, was sought, to issue ownership rights under S. 38A in respect of Ac.37.00 of land.

(xxvii) The official Respondent (1st respondent) in this Writ Petition is the State represented by the RDO (LRT). The Tenancy Tribunal is not a party. Tribunals under the two Acts are different and their jurisdictions distinct. Under S.2(w) and S. 87 of the Tenancy Act, the Tribunal shall consist of three or more members, one of them being a judicial member. If no such Tribunal is constituted, the

jurisdiction is to be discharged by the Deputy Collector or any other authorised Officer. Under S. 3(u) and 6 of the Ceiling Act, the Tribunal shall consist of not more than three members one of them being not below the rank of a Deputy Collector or a person who holds or has held or is qualified to hold the post of a District Munsif. If no such Tribunal is constituted, it shall consist of the RDO. The LRT has no jurisdiction to entertain an application under S.38Aof the Tenancy Act.

(xxviii) On 20-9-1999, W.P No.14708/1999 was disposed of with the consent of the parties with a direction that the first respondent therein i.e. The Govt. of A.P through the RDO, Chevella, Land Reforms Tribunal shall dispose of the petition u/s 38A i.e., an authority which has no jurisdiction to entertain such application/petition.

(xxix) The prayer for a declaration that the action of the LRT in not considering their tenancy rights in respect of the Sy.No.s 46, 47 and 53 paiki is illegal was not granted and must be deemed to have been rejected. Thus, the effect of the order in W.P.No.14708 of 1999 is that the order selecting survey numbers 46, 47 and 53 paiki for surrender remains undisturbed.

(xxx) In the alternative, the LRT order dated 26-5-1999 is made subject to result of proceedings under S. 38A. If the order granting S. 38A certificate is set aside, the order of the LRT remains effective.

(xxxi) Thus, the first surrender was reopened without notice to the affected parties and for the purpose of giving effect to an order u/s 38E which is patently without jurisdiction. The second surrender has also

become final (a) by virtue of the deemed rejection of the main prayer in WP .14708 of 1999 and (b) by reason of the illegality of the S.38A order. **In either case the declarant cannot be permitted to resile from the surrender.**

(xxxii) During the course of the S. 38A enquiry, on 21-4-2001, Kastopa filed an application requesting for retention of lands in Sy.Nos 46, 47 and 53 part and to consider the claim of protected tenants for Ac. 37 acres in Sy.Nos. 51, 52 and 53 paiki. By virtue of this arrangement, the order of the Tribunal dt.26-5-1999 passed at the behest of Kastopa is set at naught and the land sold to the members of M/s . Diamond Hills Welfare Association is given away to alleged Protected Tenants.

(xxxiii) Having issued the S.38 A certificate under the Tenancy Act, the same officer acting as the LRT excluded the lands covered by Section 38A certificate and pote kharab lands, concluding that the declarant was holding only 0.9999 S.H. Aggrieved by this order, the Authorised officer filed LRA 16 of 2001 which was dismissed by the order dated 2-9-2002 holding that the case can be reopened if S. 38A certificate is set aside. CRP 1200 of 2003 is filed against this order.

(xxxiv) Thus the State is divested of the total extent of land, of Ac. 137.17 cts. surrendered earlier; a portion having been excluded towards pote kharab lands; a portion reverting to the declarant; and another portion going to the alleged protected tenants. By this process, the purchasers, who purchased land that was retained on two different occasions, are deprived of their rights acquired at a time when proceedings under the Ceiling Act were

concluded. The State is also deprived of land which was originally surrendered. The declarant who surrendered land and sold the retained land is now enabled to regain land that was surrendered and sold.

(xxxv) The declarant surrendered surplus land of Ac.137-17 cts in Survey Nos.35 to 37, 40, 42 to 47 and 53 on 13.10.1976. **This is the first surrender.** Under the sale deeds of the years 1984 & 1985, land retained by the declarant was sold to various purchasers. By then, proceeding under the Ceiling Act were concluded and there was no embargo against these sales.

e) If reopening is permissible or valid, S. 7 and 17 of Ceiling Act gets attracted and bar transactions/proceedings under S. 38-A and 38-B of Tenancy Act:

(xxxvi) If land ceiling proceedings could be reopened and assuming reopening was permissible and valid, the statutory prohibition under S. 7 and 17 of the Ceiling Act would operate. It is significant that sub-section (1) and (2) of S.7 overlap in terms of the period for an application and the effect of both sub-sections is that any transfer contemplated therein including a transaction effected in execution of a decree or order or any award or order of any other authority shall be null and void between 24.1.1971 and the notified date. By virtue of sub-section (7) thereof, all such questions including validity of the alienation under clause (b), shall be determined by the Tribunal.

(xxxvii) After the notified date, S.17 comes into force. The types of alienation comprehended

include by way of sale, lease, gift, settlement, surrender, usufructuary mortgage or otherwise. Any transaction contemplated by sub-section (1), effected by a decree or order of a civil court or an award or order of any other authority, is equally void on account of sub-section (3) thereof.

(xxxviii) S.38-A and 38-B contemplate transactions essentially of the nature of an agreement involving volition of the parties. Such transfers and proceedings fall within the mischief prohibited by S. 17 and are therefore void. The application under S. 38-A and 38-B was dated 19.3.1996 which is after the notified date and reopening of the matter following the Judgment in Writ Appeal No.1420/1987, which was the basis for the application. Hence, the application and the proceedings under S. 38-A and 38-B are hit by S. 17 of the Ceiling Act and are void.

f) After issuance of a notification under S.38E, the right to purchase under S. 38 and S.38 A stands exhausted:

(xxxix) U/s 38, a Protected Tenant is given a right to call upon the land holder to sell the latter's interest in his favour and quote a price. The price which he offers shall not exceed the statutory limits prescribed by S. 38 (2). In the event of refusal by the landholder, the tenant has a right to approach the Tribunal for determination of the reasonable price and such price also cannot exceed the statutory limit under S.38(2). Sub-sections 3, 4 and 5 provide for the procedure to be adopted in the event of landlord's refusal. Sec.38(7) (a) & (b) provide for holding limits for the tenant and clause (c), the holding limits for the landholder. It being a

Compulsory sale, the protected tenant cannot exercise such a right so as to result in his holding exceeding one family holding in the aggregate or the land holder's holding getting reduced to less than two family holdings.

(xl) S.38A is an adjunct to S. 38 of the Act and not independent thereof. S.38A provides for the procedure when a reasonable price is agreed between the landholder and the protected tenant. When the tenant forces a sale and if the landholder and the tenant agree upon a reasonable price to be paid, such price shall be deemed to be the reasonable price determined by the Tribunal for the purpose of sub-sections 5, 6 and 8 of S. 38. The result is that the upper limit provided under s. 38 (2) no longer applies. The sale u/s 38A is also a Compulsory sale. The fact that there are holding limits in the sale under this section is indicative of the fact that it is not truly consensual. It is consensual only to the extent of the price to be paid, but not on the volition of the landholder to sell. Under S.38A, the upper limit of the land the tenant is entitled to purchase is three family holdings and the lower limit to which the landholder can be reduced to is one basic holding, which is one third of a family holding (S. 2(cc) of the Act.)

(xli) Thus, the nature of the right contemplated by S.38 as also S.38A is the same, namely a compulsory sale initiated at the instance of the protected tenant. The holding limitations contemplated by S.38 (7) are removed in view of the different limitations prescribed by S.38 A.

(xlii) Viewed from this angle, there can only be one such compulsory sale, but not two - one under S.38 and

another under Sec. 38A. If the landholder does not agree to sell his interest and consequent proceedings under sub-sections (5), (6) and (8) are followed, the tenant gets one family holding at the statutory maximum price. With that, the right of compulsory purchase stands exhausted. There cannot be a compulsory purchase of one family holding u/S.38 and another compulsory sale of three more family holdings under S. 38 A.

(xliii) Alternatively, even if the rights under S. 38 & 38A are independent of each other, both rights get subsumed by issuance of a notification under S.38E for the following reasons. The express language of S. 38-E enjoins that notwithstanding anything in the Act, the land that a protected tenant is entitled to purchase "under any provisions of this chapter", stands transferred to the protected tenant on a notification being issued. The expression "Right to purchase" takes within it's sweep varieties of rights conferred in the said Chapter on the tenant, to purchase. If the legislative intention is to limit S. 38-E only to S. 38 dealing with compulsory sale, the legislature would not have used the word "right to purchase". Thus the expression encompasses all sales under the Act and subject to limitations under the Chapter (like holding limitations) whether compulsory or volitional. It cannot be limited to a compulsory sale.

g) None of the orders in writ proceedings enable grant of a certificate under S. 38-A :

(xliv) The petitioners in C.R.P.No.6708 of 2003 relied on proceedings issued under the Tenancy Act, on a fundamental misconstruction of the orders passed in the writ proceedings. A proper reading of these

orders would disclose that none of those orders entitle them to obtain certificates under S. 38-A or even 38-E.

WP No.4590 of 1980, dt. 17-2-1981 :

(xlv) In this writ, this Court in it's order merely directed an enquiry to be conducted as to (a) whether the petitioners therein are declared protected tenants of the lands concerned including lands in S.No.46 and 47 and if so, under what provision and when? and (b) whether petitioners or any of them or their predecessors in interest had surrendered their tenancy rights according to law, and if so, which of them, when and in which proceedings?; and further directed that allotment in favour of Maharshi Institute would depend upon the order to be passed in the enquiry.

WP No.4095 of 1982, dt.15-7-1987 :

(xlvi) The prayer in the Writ Petition is for a declaration that they were protected tenants and were entitled to benefits of S. 38, S. 38 A and S. 38 B of the Tenancy Act (the provisions appear to have been mistyped in the material papers), notwithstanding any proceedings under the LR Act. During the course of hearing of the writ petition, it was submitted on behalf of the petitioners therein that though in the writ affidavit they had made a claim to consider their case u/s 38A and S. 38B of the Tenancy Act, they were actually entitled for a direction to consider their case under S.38 apart from the relief under S. 38-E of the Tenancy Act.

(xlvii) This court held that the petitioners therein were entitled to grant of ownership certificate u/S.38 E to the extent of Ac.73.03 gts. and directed the RDO to

issue a certificate. For the balance land, this court directed the RDO to enquire into the matter and pass orders according to law in the light of S. 38 of Tenancy Act, on such application being made. It is clear that the claim under S. 38A and S. 38B was expressly abandoned and what was sought was only a direction to consider the application that they were to make under S.38. This order cannot therefore legitimize any claim under S. 38 A & B.

(xlviii) As stated above, in view of the operation of S.38 E, no right to force any sale under S.38 survives. If such an application had been made (in fact it was not), the only order that RDO could have passed in accordance with law was a dismissal of such an application. This order of the learned single judge was confirmed in Writ Appeal No.1420 of 1987, dt.25-1-1993. Thus, the claim to a certificate either u/S.38 A or u/S.38 B is based neither on the order of the learned Single Judge nor of the Division Bench.

(xlix) In compliance with the direction of the learned Single Judge as affirmed by the Division Bench, the RDO granted a certificate u/s 38 E on 25-4-1995 in favour of a number of individuals.

(l) Though the respondents' lands are not covered by the S.38E certificate, it is necessary to point out the fundamental illegality of this certificate. The learned Single Judge as also the Division Bench could not have been understood to have directed issuance of a certificate without following the procedure contemplated by law. If the procedure contemplated by law was to be followed, it required the RDO to verify the family holdings of each individual tenant.

The RDO ought to have refused grant of a sale certificate in favour of a plurality of protected tenants. The total non-application of mind is also revealed from the fact that the certificate was issued in favour of persons who are not lineal descendants as required by S.40 of the Act. They included wives of some of the deceased protected tenants, when sons were in existence. This can be gathered from the table prepared by the RDO on a summary enquiry.

(li) The certificate under S.38E is also invalid for want of jurisdiction. S.13 of the Ceiling Act provides that the Tribunal under that Act shall decide the question of the Protected Tenant's entitlement under Sec. 38E of the Tenancy Act, where the lands of the declarant include lands in possession of protected Tenants. Thus the jurisdiction of the Tenancy Tribunal stood transferred to the LRT, either to the exclusion of the Tenancy Tribunal or concurrently. In either case, once that jurisdiction is exercised by the LRT, the Tenancy Tribunal ceases to have any further or residual jurisdiction. In the present case, the question of S.38E entitlement stood concluded consequent on the compromise recorded by the LRT in 1975.

W.P.No.3251 of 1998, dt.19-2-1998 :

(lii) This writ petition, filed complaining that the application for the certificate u/s 38 A and B was not being considered, was disposed of with a direction to hear and dispose of the application within a time frame.

W.A.No.1420 of 1987 dt. 25.1.93 :

(liii) The order in W.A.No.1420 of 1987 does not support the claim of protected tenants to any certificate

under S.38A or under S.38B. Such a claim was expressly abandoned during the hearing in W.P.4095/1982. Even the direction in the Writ Proceedings in respect of S.38 of the Act was only to dispose of the petition in accordance with law.

CRP.No.3755/1997 dt.6.11.98 :

(liv) The order dt.6.11.98 in CRP.No.3755/1997 only recognizes rights flowing from the order in W.A.No.1420 of 1987. Nothing more is determined.

W.P.No.14708 of 1999 dt.20-9-1999 :

(lv) In this order, the prayer for a declaration that the action of the LRT in not considering their tenancy rights in respect of the Sy.Nos. 46, 47 and 53 paiki was not granted and must be deemed to have been rejected. Thus, the effect of the order in W.P.No.14708 of 1999 is that (a) the order selecting Sy.Nos.46, 47 and 53 paiki for surrender remains undisturbed or (b) at the least it is subjected to the result of proceedings under S.38A. In the alternative (b), if the order granting S. 38A certificate is set aside, the order of the LRT remains effective. For reasons stated supra the S. 38-A certificate is invalid and liable to be set aside. Consequently, the surrender proceedings operate *proprio vigore*.

h) Notification for urban development or reserving for non-agricultural purpose bars operation of Tenancy Act, u/s 102 (e) thereof:

(lvi) The respondents / purchasers pleaded before the Joint Collector that in view of S. 102 (e) of the Tenancy Act, nothing in the said Act shall apply to any area which the Government may, from time to time, by notification in the official Gazette specify as

being reserved for urban, non-agricultural or industrial development. There is no enabling provision under the Tenancy Act for issuance of such notification.

(lvii) The Notification has therefore to be issued under some enabling statute by the Government. One such statute is the A.P. Urban Areas (Development) Act, 1975 (for short "APUAD Act"), which is passed to provide for planned development of urban areas in the State. As its Preamble declares it is an Act to provide for development of urban areas in the State according to the plan and matters ancillary thereto. It contains elaborate provisions for planned urban development. S.13 empowers the Government to declare urban areas, group of urban areas to be a development area for the purpose of the Act. S.6 to S.10 provide for preparation and approval of plans. S. 13 (7) declares that after commencement of the Act no development of land shall be undertaken or carried out by any person or body including any department of the Government in such area adjoining to or in the vicinity of the development area, as may be notified by the Government, unless approval of or sanction for such development has been obtained in writing from the local authority concerned. S.15 prohibits use of land in contravention of the plans. S. 57 (3) declares that notwithstanding any other law, any permission obtained under this Act would require no permission under any other law but not the converse. Hence, Notification under the said Act squarely falls within the ambit of a Notification contemplated by S. 102 (e) of the Tenancy Act.

(lviii) Gachibowli was part of the Hyderabad Urban Development Area, constituted under S. 13 (1) of the

APUAD Act, 1975 and a Master Plan therefor was approved by the Government, vide G.O.Ms.No.319, MA, dated 23.6.1980. Gachibowli village was then part of Hyderabad West Taluq at Sl.No.14.

(lix) Under the Zonal Development Plan, the subject lands were earmarked for recreation and conservation purpose, but on application of the Association, Government issued a Memo bearing No.3283/I(1)/89-3 dated 31.12.1990 under S.12 (2) of APUAD Act (published in the A.P. Gazette), converting the site in S.Nos.18/p, 48 to 52 and 53/part of Gachibowli admeasuring Ac.65.00 gts. as residential area. From that date, it is reserved for non-agricultural purpose. The learned Counsel contended that the said G.O. is subject to the payment of development charges and that Rs.2,40,000/- towards conversion charges was paid by Challan, under the cover of the letter dated 14.12.1999.

(lx) Apart from the specific conversion order with regard to the Diamond Hills layout in Sy No.50, 51, 52 and 53/p under Section 12 of the APUAD Act, there is a general modification order under G.O.Ms.No.183, MA, dated 24.3.2000 under which various lands including the subject lands in Gachibowli and other villages were designated as residential and other use.

(lxi) Government constituted a special development area under the Cyberabad Development Authority under S.3-A of the APUAD Act, vide G.O.Ms.No.538, MA, dated 29.10.2001 with a separate Master Plan. Gachibowli is one of the villages covered by this Master Plan. The preamble of the order shows that the Master Plan for this area is a model enclave with

concentration of Hitech City, International School of Business, etc.

(lxii) What all S. 102 (e) of the Tenancy Act requires is a notification. No further requirement is prescribed. It is not necessary that it should be used for the purpose. Even where land is used for agricultural purpose, after such reservation it cannot alter the situation. Hence, no further enquiry is required. The notification itself operates as a repeal or eclipse of the Tenancy Act in the area covered by the notification and all rights and liabilities under Tenancy Act and the jurisdiction of authorities under the Tenancy Act stand extinguished. Therefore, all proceedings under the Tenancy Act in respect of the lands in question on or after 1975 or at least from 31.12.1990 are *void ab-initio*, being without jurisdiction.

(lxiii) Learned Senior Counsel appearing for the petitioners in C.R.P.No.6708 of 2003 contended that a notification under S.102 (e) of the Tenancy Act is required to be issued, for asserting exemption from the Tenancy Act. Firstly, this contention ignores the express language of the Section. It is not a provision for exemption, but provides for cessation of application of the Tenancy Act in certain contingencies enumerated in S.102. The Tenancy Act does not deal with either urban development, conversion for non-agricultural purpose or industrial purpose. Therefore, the Tenancy Act is not the enabling legislation for issuance of a notification for the purpose. It is the APUAD Act which is the enabling Act and the notification thereunder, which is not in dispute, is the one contemplated by S.102 (e) of the Tenancy Act.

i) Revisional Powers are discretionary, not available to defeat an Act or seek restoration of an illegal order:

(lxiv) Revisional Powers under statutes are similar to powers under Article 226 and 227 of the Constitution of India. No interference with just orders will be made even if there is want of jurisdiction, particularly when they result in restoration of illegal orders[32]. The order passed by the RDO, set aside by the Joint Collector suffers from want of jurisdiction for reasons stated above and is illegal being contrary to S.7 and S.17 of the Ceiling Act; intended to defeat provisions of the Ceiling Act. Any interference would restore such order and Revisional powers are not to be exercised in favour of persons who had initiated proceedings to defeat provisions of the Ceiling Act. The fact that persons claiming to be protected tenants are litigating through a GPA cannot be lost sight of and that too, without any regard to death of persons who allegedly executed the GPA. The persons originally shown as protected tenants are no longer litigating and no succession orders were obtained from the competent court.

(lxv) Even if this court comes to the conclusion that some or all of the appellants before the Joint Collector have not established their *locus standi* to maintain the appeal, it does not detract from the obligation of the revisional court exercise its jurisdiction under S.91 of the Tenancy Act. The element of discretion is not avoided. In this context, the language of S. 92 of the Tenancy Act may be borne in mind which requires the revisional court to pass an order which is (a) consistent with the Act and (b) just. The reliefs in specie sought by the

petitioners fail on both counts. Allowing CRP No.6708 of 2003 restores an order which is inconsistent with the Act. It will be unjust in that it allows the petitioners to gain unjust enrichment. It is contrary to public interest as the State stands to loose almost the entire extent of land already vested in it and a near entirety of the land surrendered.

(lxvi) State is also an appellant before the Joint Collector in Case No.F2/4903/2002 and there was no revision against its appeal, by the petitioners. The petitioners now filed the Revision after the same was pointed out during the course of arguments, pleading inadvertence.

j) No Joint certificate either u/s 38 (E), S. 38 or S. 38A may be issued in favour of several tenants.

(lxvii) These Sections of the Tenancy Act provide for limitations in the form of family holding of protected tenants. Family holding as defined under S. 2 (h) and as provided for u/S.4 refers to land which a family of five persons including land which the agriculturist himself cultivates personally. A group of unconnected individuals can never be called a family. Necessarily, the question of the family holding of a plurality of tenants will have to be decided with reference to each individual tenant, not collectively. This is particularly so since a protected tenant's right to purchase is limited by family holding requirements which include the land held by him as a land holder as well. Where there are a number of persons jointly cultivating, some of them may be owning lands as landholders as well. In such a situation, necessarily the right to purchase is dependent upon the individual's holding both as a tenant and as a land holder. Therefore while there

can be a tenancy and a protected tenancy jointly among a number of persons belonging to different families[33], there cannot be a joint purchase under a sale certificate under several provisions of the Tenancy Act in favour of a plurality, particularly of unrelated individuals. The right to purchase under any of these provisions is thus an individual right of each of the joint tenants and not a collective right of all the joint tenants. In the present case admittedly, the tenants do not all belong to a single family; some of them are Hindus and some Muslims.

k) S.38-D does not render sales in favour of respondent Plot owners void:

(lxviii) According to Learned Counsel for the petitioners, the sale of plots is void under S.38-D. Assuming without admitting that sale by the vendor No.2 (persons claiming as tenants) is not proved and the sale is only by the landholder, still they are valid.

Sales are consistent with Section 38 D **:**

(lxix) When an offer is made u/S.38 D and the tenant refuses to accept it, he loses his tenancy rights as well. But there is no prohibition in the landlord and tenant together conveying their respective interests to a 3rd party. S.38D limits the power of the landholder to alienate his interest to a third party. S.30 prohibits conveyance of the tenant's interest to a third party. S. 30 cannot invalidate a conveyance of this nature. The prohibition against sub-lease or transfer of leasehold interest etc. under S. 30 of the Act is only to prevent foisting of a tenancy on an unwilling landlord. A similar provision is S. 40 of the Act, which confines heritability of tenancy rights only

to lineal descendants and in the absence of such lineal descendants, to the widow of the deceased tenant. The Act being a legislation which seeks to regulate landlord and tenant relationships ceases to operate when both rights/interests coalesce, on being transferred to a 3rd party.

(lxx) The sale deeds in favour of various purchasers fall within this category. A perusal of recitals/terms of the sale deeds shows that the landlord as also the tenant (s), both received the sale consideration and possession was delivered to the purchasers. It is thus clear that the transaction contemplated by the sale deeds is not a sale of the landholders' interest alone, but a sale of both interests. It is true that a recital is made that tenants also joined the execution of sale deeds in order to avoid future complications. This is a mere recital and it is settled law that recitals in deeds cannot control the operative parts of the deeds. The operative part of the sale deeds in question being transfer of both interests by both receiving the sale consideration and delivering possession, such operative part should prevail. [34]

Possible consequences of violation of preemption right under S. 38-D:

(lxxi) There can be three types of sales of landholder's interest in favour of 3rd parties.

Effect of sale, if violates the right of pre-emption u/s 38 D **:**

(lxxii) S. 38-D provides for a right of pre-emption. If the landholder intends to sell his interest in the land, he is compelled to offer it to the protected tenant in the first instance. On accepting the offer of the landholder's interest and purchase thereof, both

interests coalesce and the tenant becomes the full owner. However, if the tenant refuses to purchase on being offered by the landlord, *he loses his tenancy rights as well, except compensation for improvements under S. 41*.

(lxxiii) Such sales are neither void as against the landholder nor voidable at the instance of the protected tenant. They are simply not binding on protected tenants. Once the primary right of pre-emption is violated, the remedial right comes into existence. Under the law of pre-emption, the pre-emptor has a right to have his name substituted in the place of the vendor in the offending sale deed.[35] The sale is not per se void, but gives rise to a remedial right of pre-emption. If the remedial right of pre-emption is exercised, the title goes to the pre-emptor. If not, it remains with the purchaser in the offending sale transaction. In either case, title does not revert to the seller. *The seller ceases to be the landholder thereafter and no certificate of sale can be obtained in which he figures as the seller*.

(lxxiv) S. 21 provides for a similar right of pre-emption in respect of a site on which the tenant's dwelling house exists. Sub-section(6) states that any sale in contravention of such a right is void. The invalidity contemplated by this sub-section is only as against the tenant and the landholder/vendor cannot take advantage of this provision and set up the invalidity against a third party purchaser.[36]

(lxxv) There is no provision under the Tenancy Act, which deals with the remedy of the tenant whose right under S.38-D is violated.[37] The tenant's right of

pre-emption is not a common law right. It is a creature of Statute. This right of pre-emption created by a Statute and in respect of which no particular forum / remedy is provided under the Act, falls within the 2nd class of cases enumerated by Willes J in **Wolver Hampton New Water Works Company vs. Hawkenford**[38] and the tenant can only proceed under the common law. [39]

Kotaiah's case is not an authority on the true effect of S. 38-D:

(lxxvi) Even the statutory declaration of invalidity as the one contained in S.21(6) is absent in S.38-D. It is argued for the petitioners that the sales of 1985 and 1986 are void being violative of Section 38-D. Reliance is placed on the judgment of the Supreme Court in **Kotaiah's** case (9 supra).

(lxxvii) The facts are clearly distinguishable. In that case, the question of validity of the sale transaction as between the Vendor and Vendee did not fall for consideration; was never argued and was never answered. Any declaration of invalidity of the respondents' title therein is necessarily qua the tenant and his right to possession. The effect of the Ceiling Act and proceedings thereunder on the claims of the tenants makes all the difference and makes the said decision inapplicable to the facts of the present case. Further, that judgment does not rule or postulate that the land holders interest reverts to the vendor. Nor does S.38-D impose any corresponding disability like forfeiture on land holder or his transferee as in the case of tenant, whose failure results in forfeiture of tenancy. The question

whether the sale is valid between the landlord and the transferee in respect of the landlord's admitted interest of 40% as per S.40 was also not raised and decided. Therefore, **Kotiah** affords no assistance in the instant case. The consequence of any violation of S. 38-D if any is only violation of the preemptive rights to purchase and the remedy is a civil suit, as already submitted.

(lxxviii) The judgment of the Division Bench of this Court in **Sanjeevaiah Nagar Coop. House Building Society Ltd., Vs. S.Malla Reddy** (2 supra) following **Kotaiah's** case (9 supra) is also distinguishable for the reason that the transfer was made after the original landholder ceased to be the owner on 1.1.1973 as held in para 6 of the said Judgment.

(lxxix) All judgments cited by the petitioners deal with the inter-se relationship of land lord and tenant simpliciter under the Tenancy Act. These have no application in interpreting provisions of the Ceiling Act, which has overriding effect, particularly where persons claiming to be protected tenants have colluded with the landholder to defraud the State and to defeat provisions of the Ceiling Act, suppressing the fact of dismissal of their application under S. 38-E by the LRT and changing their versions from time to time. Further, persons claiming as tenants are estopped by record on account of their statement before the LRT.

Petitioner's Other Contentions Answered :

Whether CRP No.6708/2003 can be allowed for want of *locus standi* of the appellants before the Joint Collector ?

(lxxxiii) Even assuming the sales of 1985 and 1986 were violative of the tenant's right of preemption, they are valid as between Kastopa and the purchasers. Thus the purchasers become the land holders. Therefore they can maintain the appeal.

(lxxxiv) Even assuming that the non-official respondents in CRP No.6708 of 2003 could not establish their *locus standi*, that cannot be a ground to allow the S. 38-A certificate to remain for the following reason. The legality of the sale order is the subject matter of CRP No.1200 of 2003 which is filed by the State under the Ceiling Act. Indisputably, the said CRP is maintainable. If CRP No.1200 of 2003 is allowed, allowing CRP No.6708 of 2003 will bring into existence two conflicting orders.

Whether the relief of setting aside S. 38-A certificate can be limited to the appellants before the joint collector?

(lxxxvi) It is submitted that the illegality that the order under S.38A suffers from is not partial. It is total and incapable of being severed. Irrespective of whether the appeal before the Joint Collector by M / s Diamond Hills Welfare Association is competent, the order cannot be allowed to remain effective even in respect of non-appealing affected parties. Further, members of the Society obviously believed the Society to be competent to represent their interests. Irrespective of whether some of the purchasers or purchasers from purchasers joined the appeal or ever sought impleadment and irrespective of whether some of them were refused to be impleaded, the S. 38A

certificate is liable to be declared void in its entirety. Consequently CRP 6708/2003 has to be dismissed as a whole.

Whether Section 19 of the Tenancy Act has any relevance :

(lxxxvii) The learned Senior Counsel for the petitioners in C.R.P.No.6708 of 2003 tried to wriggle out from the finality of the orders dated 31.5.1975 before the LRT dismissing the application under S.38-E, by trying to invoke the aid of S. 19 of the Tenancy Act. The contention is that the said proceedings, having been passed on the basis of a compromise are contrary to S. 19. This is not tenable for the following reasons:

Tenancy rights never accrued:

(lxxxviii) By the date of preparation of the Tenancy record a civil suit was pending between the original owner and the alleged tenants with regard to the legality of their possession. This ended in a compromise in AS No.25/58 whereunder the alleged tenants admitted : *" Pattadar to be true and sole and lawful owner of the scheduled lands and that the possession of the tenants with regard to the suit lands was held to be unlawful and the tenancy certificate (Ex.B14) issued in the names of all respondents jointly is void and ineffective and they disown all such tenancy rights flowing out of the said certificates, and that all the tenants are making applications to the office of Tahsil Hyderabad West for surrender of such rights and deletion of their names from the record of rights"* . Therefore, the alleged tenants had no tenancy rights at all and filing of applications for surrender was a mere

formality intended only for the purpose of rectifying the record by making surrender of non-existent tenancy rights.

Compromise in A.S.No.25/58 and LRT operate as estoppel by record:

(lxxxix) As earlier submitted, the LRT has exclusive jurisdiction to decide all questions that arise for the purpose of determination of the ceiling limit or questions under S. 13 of the Ceiling Act. Compromise is not surrender. There is no provision under the Tenancy Act which prohibits a compromise. Even where the want of satisfaction of the statutory grounds for passing the eviction order under the Delhi Rent Act rendered the proceedings a nullity, such satisfaction was not required when the eviction order was passed on a compromise[40]. On the other hand, such a compromise is essentially an agreement, which is saved by S. 33 of the Tenancy Act. The compromise does not purport to surrender any tenancy rights. On the other hand, it only reiterates and reaffirms the factual and legal position that the applicants therein were not protected tenants, having surrendered their PT rights in 1965-66 before the Tahsildar. These are admissions, which need not be proved, in view of S.58 of the Evidence Act. Further, they operate as an estoppel by record and petitioners are estopped from disputing the correctness of the said statement. The order of the LRT has become final and operates as *res judicata,* both in respect of their status as well as withdrawal of their application under S. 38-E.

Table prepared by the Order of the RDO dated dt.27-7-1981

(xc) Pursuant to the order of this Court in W.P. No.4590

of 1980, RDO conducted an enquiry and recorded some findings. Through a summary enquiry, he prepared a list of persons taking the tenancy register as the basis. According to him they are the successors. This summary enquiry is vitiated on three counts: (a) Rule 14 r/w Rule 26 of the Hyderabad Tenancy & Agricultural Lands Rules of 1950 under Sections 35 & 37 confers jurisdiction on the Tahsildar to hold an enquiry in the cases of succession of protected Tenancy rights; the RDO is not competent in this regard. (b) No summary enquiry is contemplated either by S. 41 or by the Rules (c) Some of the names included in the list are not lineal descendants as is required by S. 40 of the Act.

Claim for tenancy rights is contrary to record:

(xci) After obtaining an order from this Court in W.P. 4059 of 1982 as confirmed by the WA 1420/1987, a different set of individuals, (though some them are common with those who figured as the petitioners in W.P. 4059 of 1982), obtained certificates under S. 38E & 38A. A perusal of the lists shows that these petitioners are referable to the table prepared by the RDO. The petitioners have not filed any proceedings to prove their plea of tenancy. The said claim has not been asserted or adjudicated at any time before the competent authority under the Tenancy Act. They rely on the Judgment of this court in support of their claim, which cannot be treated as evidence. All petitioners claim to be successors and there is no proceeding under S. 40 of the Tenancy Act and no application for such succession; and order was admittedly passed, nor is one filed.

State of A.P. v. Yadagiri Reddy(3 supra) **suffers from the vice of *sub-silentio***:

(xcii) S.13 of LR Act does not refer to any other provision of the Tenancy Act except S. 38-E. The expression "stands transferred" is incapable of covering any other provision of the Tenancy Act. However, learned Counsel for the petitioners in C.R.P.No.6708 of 2003 relies on one sentence in para 56 of ***State of A.P. v. Yadagiri Reddy (3 supra),*** in which it is observed, *"however, the section nowhere provides that the Tribunal does not have to decide about the lands covered under S. 38-B of the Tenancy Act"*. The question whether the powers under S. 38-A and 38-B are also conferred on the LRT was not considered and decided. S. 7 and 17 of the Ceiling Act, were not brought to the notice of the Supreme Court and the effect of provisions of the Tenancy Act particularly S. 38-A and 38-B vis-à-vis S. 7, 17 and 28 of the Ceiling Act were not considered. Two questions needed to be answered in favour of the declarant to entitle him to exclusion of the land covered by S.38B (in the present case S. 38A) - (a) that the transaction under S. 38B is legal and is not prohibited by the Ceiling Act or any other Act; and (b) that the land so covered is liable to be excluded from the holding of the declarant. The Supreme Court proceeded to examine question (b) on a *sub silentio* assumption of the validity of the transaction. No arguments were advanced and the Court did not address itself to it. This judgment falls squarely within the description of *sub silentio* judgments. The test set out by Salmond was approved by the Supreme Court in **Municipal Corporation of Delhi v. Gurnam Kaur**[41]. It is observed in para 11 of the said Judgment as under:

"A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made

compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of Salmond on Jurisprudence, 12th edn., explains the concept of sub silentio at p. 153 in these words :

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

(xciii) In fact, the Supreme Court in a later decision **A-One Granites v. State of U.P**[42] held that a judgment *sub silentio* is not law declared within the meaning of Art. 141 of the Constitution of India.

(xciv) A transaction under S. 38 or 38A even if permissive under a special statute as contended by the learned Counsel for the petitioners, is still dependent upon the volition of one of the parties to the transaction. It cannot be likened to an involuntary transaction like the one under the Land Acquisition Act. Even a court auction sale is prohibited under S. 17 of the Ceiling Act. If, on the other hand, a S. 38A transaction is completely consensual, it falls squarely within the prohibition of S. 17 of the LR Act.

Kastopa not being a party, the proceedings are incompetent and do not bind the purchasers:

(xciv) Kastopa was not a party to the orders in W.P.No.4590 of 1980 dated 17.2.1981, W.P.No.4059 of 1982 dated 15.7.1987 and W.A.No.1420 of 1987 dated 25.1.1993. These proceedings touching upon the landlord-tenant relationship and benefits arising out of such relationship cannot be determined without the presence of the landlord. At any rate, they cannot bind non-parties, namely, Kastopa and its purchasers. When sales were made in favor of R8-72, ceiling proceedings were no longer pending and there was no prohibition for sale under S. 17.

After the sale, Kastopa was no longer the owner :

(xcv) In the meanwhile, third party plot owners became the owners and Kastopa ceased to be the land owner. But, plot owners were not parties to any subsequent proceedings, including those arising out of the applications under S. 38-A and 38-B. In fact, it was M/s Diamond Hills Welfare Association which objected to the surrender proceedings as is evident from the report of the MRO dated 5.5.1999. In spite of the same, they were not made parties in any subsequent proceedings including W.P.No.14708/1999 arising out of such surrender proceedings. Kastopa was no longer the owner of any land on account of finality of the ceiling proceedings and consequent surrender proceedings which Kastopa signed without demur and also sale of the retained land in Sy.Nos.50-52 and 53/part. These proceedings smack of fraud and collusion between the so called tenants and Kastopa and are also void, apart from the vice of suppression of the proceedings of the LRT dated 31.5.1975, in obtaining such orders. All the proceedings are, therefore, incompetent, and inoperative.

Kastopa is not a "limited owner" within the meaning

of S. 3 of Ceiling Act:

(xcvi) For the petitioner it was submitted that Kastopa was a limited owner within the meaning of the Ceiling Act by a reference to various provisions of the Tenancy Act particularly S. 40(3) which stipulates the ratio of the interest of the land holder and the tenant under the Act. The expression "limited owner" is not defined under the LR Act. The said expression occurs in Sections 3(n), 3(i) and 12(5A). S. 12 (5A) makes it clear that the expression "limited owner" is intended to take in, a life interest holder. The said section provides for reversion to a person having a vested remainder in the event of surrender by a limited owner. It is therefore clear that the legislature used the said expression (in the Ceiling Act) to denote a person who is having a life interest only, with the vested remainder inhering in another. The statement of objects and reasons for the 1977 amendment to the Ceiling Act also makes it clear that this is the only intendment of the legislature in using the said expression.

Plea of remand is untenable:

(xcvii) The petitioners finally pleaded for a remand, which is misconceived and untenable for the following reasons:

-No application under S.38A is maintainable after issuance of the notification under S. 38E *(This defect cannot be cured by an order of remand)*

- Sale under S.38A is prohibited by S. 17 of the LR Act, if the reopening of the land reforms case is valid. *(This defect cannot be cured by an order of remand)*

- In view of the fact that by date of the application and order under S.38A, the land ceased to be agricultural land, no proceeding under the

Tenancy Act is maintainable. *(This defect cannot be cured by an order of remand)*

- In the petition under S.38A & B, applicants rely on the order of this Court in W.P.No.4059 of 1982 as affirmed in the Writ Appeal, for their claim to being as protected Tenants and for the entitlement to have a sale certificate under S. 38A. As submitted above the writ issued by this court does not lend any such support.

- The application is stated to have been made under S. 38A & 38B. It is submitted that combining S. 38 A and S. 38 B is impermissible. While S. 38 A is for issuance of a certificate of sale on payment of an agreed price, a certificate under S. 38 B is issued on relinquishment of the landholder's interest without consideration. It cannot be that protected tenants were unaware whether there was an agreed price or it was free of consideration.

- In the body of the application, the case set out falls neither u/s 38 A nor U/s 38 B. What the petition states is:

> "*It is further submitted that the petitioners and holders late Elias Burni and his heirs, successors have already relinquished their rights in respect of the remaining area of Ac.84 and covered by Sy.Nos.46, 47, 51, 52 and 53 situated at Gachibowli village, Serilingampally Mandal, Ranga Reddy District. Therefore, the petitioners are entitled for ownership rights u/s 38-A & 38-B of the A.P.(Telangana Area and Agricultural Land) Act in respect of the above said extent.*"

Evidently this takes it out of S. 38A. It does not fall under S. 38B also for two reasons (i)

Relinquishment is a one time event, as against abandonment which may involve a process involving considerable length of time. Elias Burni and his heirs and successors cannot be said to have relinquished. At best they can be said to have abandoned. Even otherwise, the application is totally silent as to when such relinquishment took place. (ii) The person who is said to have relinquished is not made a party. It is not the case of the protected tenants that Kastopa relinquished. *(This defect cannot be cured by an order of remand)*

- An application under S. 38B has to be made by the Landholder but not by the Protected Tenant. Here the alleged protected Tenants filed the application.

- An application under S. 38A can be filed either by the landholder or the Protected Tenant or by both. However, it should be for a price. The allegations in the application being that the landholders had relinquished, it is not for a price and therefore cannot be under Sec. 38A. *(This defect cannot be cured by an order of remand)*

- Sworn statements on behalf of land holders and protected tenants were recorded contrary to the claims in the petition, which is based on a relinquishment. Sri Anil Kumar Kandar on behalf of Kastopa stated that an agreement of sale was entered into in 1970 with protected tenants in respect of land bearing Sy.Nos. 46, 47, 51, 52 and 53 to an extent of 65 acres @ Rs.1,000/- per acre and further that entire sale consideration had been received from protected tenants. On behalf of protected tenants Sri Venugopal Reddy, the GPA

holder stated that for the land remaining after issuance of the 38 (E) certificate, protected tenants had initiated the present proceedings having purchased the same from the landlord under a simple sale deed. The RDO found an unregistered sale deed dt.20-3-1970 to be genuine and that the entire sale consideration had been paid therein. Thus the basis of the application viz., relinquishment by Burni and his successors is abandoned and a new case of a 1970 transaction was introduced; and even in respect of this 1970 transaction, the versions of the alleged landholder and the alleged protected tenants are at variance with each other. Even if any order of remand is made, these inconsistencies cannot be eschewed or resolved and the petitioners cannot be permitted to improve upon an already improved case.

- Going by the averments in the application, Burni and his successors had relinquished their interest. In that case, Kastopa cannot be the landholder from whom a sale under S. 38A can be obtained. *(This defect cannot be cured by an order of remand)*

- By virtue of sales in favour of members of M/s Diamond Hills Welfare Association, even if the said sales are violative of S. 38D, Kastopa ceased to be landholder and had no saleable interest to be passed on under S. 38A. (Kastopa did not deny the sales and in fact did not file a counter in the appeal before the Joint Collector, while the alleged Protected Tenants denied their having executed the sale deeds). *(This defect cannot be cured by an order of remand).*

- Petitioners can obtain a S.38-A certificate only

if they are protected tenants. The only piece of evidence before the RDO and the Joint Collector is a photo copy of the order of this Court in WA No.1420 of 1987. The said order does not support the claim of the petitioners, of being protected tenants. No other evidence is placed before the Tenancy Tribunal in the form of extracts from relevant records. This defect of absence of (pleading or establishment of) jurisdictional fact cannot be cured by providing an opportunity to the revision petitioners to adduce further evidence. However, no such request for permission to adduce further evidence was ever been made. Justice of the case also does not warrant giving any such opportunity, even if such a request were made.

- The application for grant of a certificate under S. 38A is totally silent with regard to holdings of the respective parties. No evidence is adduced and no finding is recorded. Curing this defect involves an amendment to the application and adducing further evidence. No request is made in this regard and substantial justice of the case also does not warrant acceding to any such request, even if made.

- A joint sale certificate is not contemplated by the Act, as the entitlement of a Protected Tenant is dependent upon the *individual* family holding of the protected tenant. (*This is not curable by an order of remand.)*

(xcviii) If this Court comes to a conclusion, even in respect of one of the incurable legal infirmities (enumerated), an order of remit becomes otiose. A certificate under S.38-A may be issued if and only when the various conditions under that section are satisfied and not otherwise. The conditions under S.38-A are cumulative and non-

satisfaction of even one of them renders the whole certificate void. As already submitted, the application under S.38-A itself is misconceived and is incompetent, incurable even by an amendment, which cannot be permitted to take away any admission.

(xcix) The decision in **Ramji Sharma Vs. State of Bihar**[43] was cited to contend that in and around towns and urban areas at one point of time most of the lands were being used for agriculture or horticulture purposes. However, with the growth in population and development activities slowly such agricultural lands were converted to non-agricultural uses leading to the development of many colonies by the side of old cities and such lands can no longer be treated as agricultural lands under the Tenancy Act.

(c) It is further contended that C.R.P.S.R.Nos.24532 of 2012 and 24636 of 2012 having been filed with unduly long delay of more than 3000 days, the applications to condone the delay in filing the said C.R.Ps by the petitioners therein/alleged protected tenants ought not to be allowed by this Court and the said C.R.P.S.Rs should be dismissed.

Contentions of Sri C.Hanumantha Rao, learned counsel for the Respondents:

13. The petitioners in C.R.Ps have placed reliance in their application dated 19-08-1996 (for grant of sale certificate under S. 38-A) upon a document purporting to be a final register of protected tenants under S. 37-A which also contains names of the persons who had succeeded to the deceased protected tenants; this document has no legal sanctity; there is no form “B” certificate under S. 37-A produced by the petitioners in

C.R.P.No.6708 of 2003; the petitioners failed to prove their possession of the lands in Sy. No.51 to 53 paiki as required by S. 37-A; the Seshala Pahani filed by the petitioners for the period 1955 to 1958 shows only the possession of Ilias Burni; and therefore C.R.P.No.6708 of 2003 should be dismissed. He relied upon **Boddam Narsimha v. Hasan Ali Khan**[44], **Bandi Krishnamurthy v. Pasupuleti Venkatesam**[45] and **Mohinder Kumar v. State of Haryana**[46] in support of the above contentions.

Contentions of Sri E.Ajay Reddy, learned counsel for Kastopa:

14. The cases cited by the Additional Advocate General for the State relating to reopening of declarations finalized under the Land Ceiling Act do not deal with protected tenants and the said decisions are distinguishable. When the primary authority under the Ceiling Act did not follow S.13 of the said Act, while dealing with the declaration filed by a land holder, there is no infirmity in reopening the ceiling proceedings. Therefore, dismissal of C.R.P.S.R.No.24698 of 1976 on 28-04-1976 by the High Court did not give finality to ceiling proceedings.

Reply contentions by Sri Venkataramana, learned senior counsel for the petitioners in C.R.P.No.6708 of 2003:

15. (i) The scope of the Ceiling Act and the Tenancy Act are different; both contain *non-obstante* clauses (i.e. S. 104 of the Tenancy Act and S. 28 of the Ceiling Act); both enactments do not operate in the same field; and therefore the provisions of the Tenancy Act should prevail insofar as the rights of protected tenants are concerned.

The Division Bench of the High Court in its order dated 25-01-1993 in W.A.No.1420 of 1987 categorically held that proceedings under the Ceiling Act dated 09-12-1975 computing the ceiling of Kastopa as 2.2862 SH are of no consequence; that the said order had become final; and therefore there was nothing wrong in reopening proceedings under the Ceiling Act after granting certificates under Section 38-E and 38-A of the Act.

(ii) Only an authority under the Tenancy Act can decide entitlement to a certificate under S. 38-E of the said Act. No authority under the Ceiling Act can decide the holding of a declarant in respect of land in possession of protected tenants. Any adjudication by the Tribunals under the Ceiling Act is not final. Ceiling proceedings are always subject to rights of protected tenants under S.38-E and 38-A of the Tenancy Act.

(iii) Kastopa's interest in the land is only 40% as per S.40 (4) of the Tenancy Act; any declaration by Kastopa under the Ceiling Act is only in respect of such interest; and Kastopa cannot be deemed to have surrendered to the State under the Ceiling Act, interests of protected tenants in 60% of its entire landholding.

(iv) The decision in **A.Lachanna Dora v. The District Collector**[47] is referred to, to contend that under S. 17 of the Ceiling Act, compulsory acquisition of land under Land Acquisition Act or involuntary transactions are not covered and that rights of protected tenants under S.38, 38-E, 38-A or B of the Tenancy Act are similar involuntary transactions to which S. 17 does not apply.

(v) Members of M/s Diamond Hills Welfare Association have no *locus standi* to file the appeal before the Joint Collector under S. 90 of the Tenancy Act as the sale

deeds executed by Kastopa in their favour are in violation of S. 38-D of the Tenancy Act and void. He relied on **Sanjeevayya Nagar House Building Co-operative Society's** case (2 supra) to urge that a sale in violation of S. 38-D of the Tenancy Act is void and merely because some of the protected tenants joined such sale deed executed by the landholder as parties, their rights are not extinguished. **Rafique Bibi (dead) by LRs. v. Sayed Waliuddin (dead) by LRs. and others**[48], wherein the Supreme Court held that a Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. Therefore, the order passed by the Joint Collector in the appeal to which M/s Diamond Hills Welfare Association is a party deserves to be set aside.

Orders of a superior court such as a High Court (particularly the order dated 25-01-1993 in W.A.No.1420 of 1987) must always be obeyed no matter what flaws it may be said to contain; and the order dated 09-12-1975 of the Land Reforms Tribunal in relation to the declaration filed by Kastopa will not operate as *res judicata*.

(vi) The order dated 29-09-2000 in L.R.A.No.13 of 2000 was not challenged by any one; in the said order, the Tribunal clearly held that protected tenants were not parties in C.C.No.W/264/75 (declaration filed by Kastopa before the Land Reform Tribunal); protected tenants filed claim petition before the R.D.O. cum Land Reforms Tribunal in File No.G/3640/96; the Tribunal did not consider their claim in his order dated 26-05-1999 (wherein he directed Kastopa to surrender excess land of 0.6236 S.H.); when Kastopa filed C.R.P.No.3755 of 1997 before this Court, the Court had directed that Pot Kharab lands be deleted from the holdings of the declarant; and that consequently land reform proceedings had been

reopened. In view of the same under S. 13 of the Land Reforms Act, claims of protected tenants under S.38-A and B of the Act should be considered while determining the holding of the declarant. In view of this circumstance, there was no error in reopening of ceiling proceedings and exclusion of the lands in respect of which S. 38-E certificate and S. 38-A certificate were granted to protected tenants.

C. Analyses of the issues in C.R.P.No.6708 of 2003, C.R.P.No.1200 of 2003, C.R.P.S.R.Nos.24532 of 2012 and 24636 of 2012:

I. **C.R.P.S.R.Nos.24532 of 2012 and 24636 of 2012:**

16. The two Revisions are filed under S. 91 of the Tenancy Act on 5.9.2012 and 06-09-2012 respectively by the petitioners therein against the order dated 9.12.2003 in Case No.F2/4903/2002 of the Joint Collector, Ranga Reddy District, allowing the appeal filed by the Authorised Officer, Land Reforms, Ranga Reddy District and setting aside the order in G/3640/96 dated 28.4.2001 of the Revenue Divisional Officer, Chevella Division, Ranga Reddy District. The petitioners also filed applications under S. 5 of the Limitation Act, 1963 to condone the delay of 3100 days and 3079 days respectively contending that on account of bonafide mistake failed to challenge the said order immediately after it was passed. These applications are opposed by the learned Additional Advocate General on behalf of the State and the counsel for the respondents therein vehemently. They pointed out that a common order dated 09-12-2003 was passed in Case No.F2/4903/2001 (impugned in these C.R.P.S.Rs.) and in Case No.F2/4902/2001 (impugned in

C.R.P.No.6708 of 2003) and that when the petitioners could challenge the order in the latter case in C.R.P.No.6708 of 2003, they cannot contend that they are unaware of the order in the former case and the plea of mistake is unbelievable. We find force in this contention of the counsel for the respondents. It is difficult to believe that the petitioners noticed the order in the latter case and not the order in the former case. Therefore we are not inclined to accept the plea of bonafide mistake raised by the petitioners. We hold that there is unexplained negligence on their part and no sufficient cause is vouchsafed to condone the delay in filing of the C.R.Ps. against the order in the former case. Therefore the applications for condonation of delay filed by the petitioners in both the C.R.P.S.Rs. are dismissed and consequently the C.R.P.S.Rs. stand dismissed.

17. However, we may point out that Case No.F2/4903/2001 is an appeal filed under S. 90 of the Tenancy Act by the Authorized Officer (Land Reforms), Ranga Reddy District challenging the order dated 28-04-2001 in Case No.G/3640/96 of the Revenue Divisional Officer, Chevella Division granting sale certificate under S. 38-A of the Tenancy Act to the petitioners in C.R.P.No.6708 of 2003 and in the above C.R.P.S.Rs. In the said appeal he contended that by virtue of the said order, the State Government is deprived of the above land which vested in it *qua* the order dated 09-12-1975 in C.C.No.W/264/75 whereunder the declarant Kastopa was found to be a surplus landholder of extent Ac.137.17 cts. (2.2862 SH) and possession of the said land was also handed over by the declarant to the concerned Tahsildar on 13-10-1976. We are of the view that the said appeal at the instance of the Authorized Officer, (Land Reforms), Ranga Reddy District was not maintainable as only the State could have filed the said appeal, as the State was the aggrieved party. In **District Collector, Srikakulam**

and others Vs. Bagathi Krishna Rao and another[49]**,** the Supreme Court held that no individual officer of the Government under the scheme of the Constitution or under the CPC can file a suit or initiate any proceeding in the name and the post he is holding, who is not a juristic person and if the State is the aggrieved party, it ought to initiate such proceeding and a proceeding filed by officials is not maintainable. In this view of the matter, we are of the view that the said appeal filed by the authorized officer (Land Reforms), Ranga Reddy District is not maintainable and the order passed therein i.e. Case No. No.F2/4903/2001 has to be treated as nonest in the eye of law. However this finding will not effect adjudication in case No.F2/4902/2001 which is the subject matter of C.R.P.No.6708 of 2003.

II. CRP No.6708 of 2003 and CRP No.1200 of 2003:

18. The scope of Section 91 of the Tenancy Act and Section 21 of the Ceiling Act :

As mentioned above, CRP No.6708 of 2003 is filed under S. 91 of the Tenancy Act and CRP No.1200 of 2003 by the State under S. 21 of the Ceiling Act.

Section 91 of the Tenancy Act states :

" Section 91.Revisions:

Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by the Collector or Board of Revenue on the following grounds:

(a) that the original or appellate authority exercised a jurisdiction not vested in it by law; ;or

(b) that the original or appellate authority failed to exercise a jurisdiction so vested; or

(c) in following the procedure or passing the order, the

original or appellate authority acted illegally or with material irregularity."

Section 21 of the Ceiling Act states :

" Section 21 - Revision

An application for revision from any party aggrieved, including the Government, shall lie to the High Court, within the prescribed period, from any order passed on appeal by the Appellate Tribunal on any of the following grounds, namely:-

(a) that it exercised a jurisdiction not vested in it by law, or

(b) that it failed to exercise a jurisdiction so vested, or

(c) that it acted in the exercise of its jurisdiction illegally or with material irregularity."

We now analyze the scope of the jurisdiction of the High Court under these Sections.

S. 91 of the Tenancy Act and S.21 of the Ceiling Act are *in pari materia* to provisions of S. 115 of the Civil Procedure Code.

It is settled law that under S. 115 of the Civil Procedure Code, the High Court cannot re-appreciate evidence. It can only interfere with findings of fact if such findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the Courts below. Simply because another view of the evidence may be taken, is no ground for the High Court to interfere in its revisional jurisdiction. (see **YUNUS ALI v. KHURSHEED AKRAM**[50], **GURDIAL SINGH v. RAJKUMAR ANEJA**[51] **and KEMPAIAH v. CHIKKA BORAMMA**[52]). Unless the statutory authority whose orders are impugned in revision had committed any error of jurisdiction or acted with material irregularity affecting his jurisdiction, this Court cannot interfere with

the order of such authority in exercise of it's revisional jurisdiction.

While construing S.91 of the Tenancy Act, this Court held in **RAJ KISHAN PERSHAD v. JOINT COLLECTOR, RANGA REDDY DISTRICT** [53] that the power of the High Court under S. 91 of the Tenancy Act is very limited and it is not within the scope of it's revisional power to re-appreciate or re-appraise the evidence or facts placed before the original as well as the appellate fact finding authorities; that in so far as the finding of facts are concerned, ordinarily, finality is attached; and only in the event of errors in relation to the exercise of jurisdiction by the authorities under the Tenancy Act, revisional power is exercisable; that S. 91 of the Tenancy Act to a large extent is *in pari materia* S.115 of the Civil Procedure Code, 1908; and that the Supreme Court in **MAHABIR PRASAD SINGH v. JACKS AVIATION** [54] has held that while exercising revisional power under S. 115, the High Court has no competence or jurisdiction to interfere with all sorts of errors that may have crept in the exercise of jurisdiction by fact finding authorities. **BULIKA CHANDRAIAH v. TADI NARAYANA REDDY** [55] held that the illegality or material irregularity contemplated by S.91 (c) must be of procedure and not the main decision and that errors of law and fact in the decision are not covered by it. In **NARAYANA REDDY v. HANUMANTHACHARYULU** [56] this Court held that revisional jurisdiction of the High Court under S.91 of the Tenancy Act is analogous to that under S. 115 of the CPC, but with this vital difference, namely, that whereas under S. 115 of the CPC, the exercise of the powers of the High Court is discretionary, under S. 91 of the Tenancy Act, the aggrieved party has a right of revision on any of the grounds specified in that Section in view of the fact

that in S. 91 of the Tenancy Act, the legislature used the words "an application for revision *shall lie* to the High Court*".*

While construing S. 21 of the Ceiling Act, the Supreme Court in **STATE OF A.P. v. VATSAVYI KUMARA** [57] held that the said Section is *in pari materia* S. 115 CPC; that the jurisdiction of the High Court under the said Section is not an appellate jurisdiction; and a pure finding of fact reached by the Court of appeal could not be interfered with. However, it was held that the High Court can interfere in revision when it is satisfied that the findings reached by the Court below suffer from any jurisdictional errors. It followed **HARI SHANKER v. RAO GIRDHARI LAL** [58] and held that the High Court's powers are confined to jurisdictional errors and pure findings of fact cannot be interfered with.

19. While disposing of these revision petitions, we are mindful of the limits of our jurisdiction under s.91 of the Tenancy Act and S.21 of the Ceiling Act and would deal with contentions of the parties and the points framed by the Supreme Court while remitting the matter to this Court, accordingly.

(a) Analyses of Issues 5, 7 and 8 framed by the Supreme Court:

20. We firstly deal with the points 5, 7 and 8 framed by the Supreme Court in its order dated 7-12-2010 in Civil Appeal No.3054 of 2006 and batch. These are :

> *" (5) Whether the lands covered by protected tenancy rights were liable to be excluded from the holding of Kastopa Corporation under the Ceiling Act and, if they had not been excluded initially, whether the authorities under the Ceiling Act could exclude them subsequently at the instance of the protected*

tenants or the land holder?

7) Whether the surplus land to an extent of Ac.137.17 cts in Sy.Nos.35,36,37, 40,42 to 47 and 53 of Gachibowli village had vested in the Govt. U/s.11 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as the "Land Reforms Act"). If so whether, any transaction by way of sale deeds or otherwise by the 'protected tenants' and the 'pattedars' are void ab initio ?

(8) Whether the ceiling proceedings had attained finality with the dismissal of the Civil Revision Petition (SR) 24698 of 1976 by a learned single Judge of the High Court vide order dtd:284.1976. If so whether the same could not be reopened in writ proceedings and in the absence of necessary parties or in collateral proceedings like Civil Revision Petition No.3577 of 1997 ?"

21. From the factual narrative, it is clear that Kastopa through its partner Rashiklal R. Kamdar had filed a declaration under the Ceiling Act in C.C.No.W/264/75 on 9.4.1975 declaring that it owns Ac.190.17 gts. in Sy.Nos.35 to 37, 40, 42 to 47, 50 to 53 of Gachibowli village. In the said declaration filed by it, Kastopa did not state that there were any protected tenants in the above lands.

22. Under S. 8 (1) of the Ceiling Act r/w Rule 4 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, a public notice in form IV containing particulars of lands and persons holding such lands in respect of the Kastopa declaration was published, affixing a copy thereof on the notice boards of the office of the Land Reforms Tribunal, Hyderabad (West), the Taluq

office and of the Gram Panchayat in whose jurisdiction the lands are situated, on 15-6-1975 and 5.7.1975. The fact of receipt of the declaration and its availability for public inspection in the office of the Tribunal was announced by beat of Tom Tom in all the villages in which the lands are situated on 5.7.1975 itself. No objections from any alleged protected tenants were admittedly received by the Land Reforms Tribunal in response to the said public notice.

23. The record further reveals that there was a compromise dt.30.5.1975 between some persons claiming to be protected tenants of the above land and Kastopa under which the said alleged protected tenants stated that they are surrendering their protected tenancy rights asserting that they were never in possession of the land. The validity of this compromise is no doubt disputed by the petitioners in the CRP.No.6708/2003. Based on the compromise, an order dated 31.05.1975 in Ref.No.LLRW/47/75 was passed by the Additional RDO, LRT, Hyderabad West dismissing the claim of the protected tenants under S.38-E of the Tenancy Act, holding that there was a surrender of protected tenancy rights by the protected tenants before the Tahasildar which was accepted by the latter and consequently protected tenants are not entitled to claim ownership certificates under S.38-E. This order was never challenged by the protected tenants.

24. Thereafter, an enquiry was held on 15-11-1975 and final orders passed u/S.9 of the Ceiling Act by the Land Reforms Tribunal, Hyderabad (West) on 9.12.1975, holding that Kastopa was holding excess land of 2.2862 SH as on the notified date i.e. 1.1.1975.

25. Aggrieved, Kastopa filed LRA No.10 of 1976 before the Land Reforms Appellate Tribunal. This appeal was

dismissed on 6.4.1976. Kastopa then filed CRP Sr.No.24698 of 1976 which was dismissed by this Court on 28.4.1976.

26. Pursuant to the said order, the declarant Kastopa proposed to surrender Ac.137.17 cts in Sy.Nos.37, 40,42 to 47, 35, 36 and 53 of Gachibowli village. Again, notice in form no. VIII under Sub Rule (4) of Rule 7 of the above Rules was issued on 4.9.1976 calling for objections on the surrender proposed by the declarant. Notices were published as required under the Rules. Again no objections were filed by the alleged protected tenants before the Land Reforms Tribunal. The surrender of the above lands was consequently accepted by the order dated 8.10.1976 of the Tribunal. Possession of the surrendered lands was taken by the Revenue Divisional Officer, Hyderabad (West) on behalf of the State, on 13.10.1976. These facts can be gathered from the orders dated 9.12.1975 and 8.10.1976 of the Land Reforms Tribunal, Hyderabad (West) which are filed by the State in CRP No.1200 of 2003 and are not disputed by any of the parties to the said CRP or to CRP No.6708 of 2003. The LRT, Hyderabad also issued notice dated 24.01.1978 in Form-XIII declaring that the extent of Ac.137-17 guntas surrendered by Kastopa had vested in the State under S.11 of the Ceiling Act and calling for claims from any interested persons for compensation under S.16 of the Ceiling Act within 30 days of publication of this notice in the A.P.State Gazette. It is not disputed that the alleged protected tenants did not claim any share in the compensation of Rs.5,000/- granted to Kastopa in respect of their 60% interest in the land (*qua* S.40(4) of the Tenancy Act).

27. It is pertinent to note that lands in Sy.Nos.50 to 52 and part of 53 of Gachibowli village were not surrendered by Kastopa to the State and were retained by it towards

the 1 (One) Standard Holding which it was entitled to retain under the Ceiling Act.

28. By proceedings dt.25.4.1995, ownership certificates u/s.38-E of the Tenancy Act were issued to certain persons claiming to be protected tenants in respect of Ac.73.03 gts in Sy.No.37,40,42-45 of Gachibowli village, comprising the land surrendered by Kastopa mentioned above. On 1.4.1996, Kastopa filed a petition to reopen and re-compute it's holding on the ground that persons claiming to be protected tenants were granted ownership certificate u/S.38-E. By order dated 28.4.2001 in Proc.G/3640/96 passed by the Revenue Divisional Officer, Chevella , sale certificates under S. 38-A were issued to persons claiming to be protected tenants in respect of Ac.17.20 gts in Sy.No.51, Ac.15.36 gts in Sy.No.52 and Ac.4.01 gts in Sy.No.53 (Paiki) of Gachibowli village. By the order dt.28.4.2001 in C.C.No.W/264/75, the RDO, Chevella acting as the LRT under the Ceiling Act excluded Ac.73.06 gts for which he had granted ownership certificate u/S.38-E of the Tenancy Act; Ac.20-35 gts said to be pote-kharab lands; and Ac.37-17 gts for which he had granted sale certificates u/S.38-A of the Tenancy Act from the holding of the declarant Kastopa and held that Kastopa's holding had become non-surplus. He further directed that the M.R.O., Serilingampally should restore Ac.11-28 gts in S.No.46, Ac.16-10 gts in Sy.No.47/p and Ac.9.03 gts in Sy.No.53 paiki at Gachibowli village to the declarant immediately.

29. The question is whether proceedings under the Ceiling Act which attained finality on 28-04-1976 (on dismissal of CRP.SR.24698/1976 by the High Court) may be reopened and 19 years later (to grant S.38-E certificates on 25.4.1995) and again 25 years later (to grant certificates u/s.38-A of the Tenancy Act). The Ceiling Act was amended by the Andhra Pradesh Land Reforms

(Ceiling on Agricultural Holdings) (Amendment) Act, 2012 (Act 17 of 2012) retrospectively w.e.f.1.1.1973 inserting S.9-A in the parent Act. Sub-section (1) thereof permits re-opening of cases by the LRT, notwithstanding anything repugnant to the provisions of the Ceiling Act, either *suo motu* or on application or direction of the Collector, Chief Commissioner of Land Administration or Government, if they were found to have been passed due to any fraud or misrepresentation or suppression of facts in situations where no subsequent orders are passed in appeal or revision on the same. Proviso to sub-section (1) empowers the LRT to either *suo motu* or on application or direction of the Collector, Chief Commissioner of Land Administration or Government, to review cases where orders (later confirmed in appeal or revision) are found to have been passed due to any fraud or misrepresentation or suppression of facts and pass orders for filing of review petition against the orders in appeal or as the case may be the orders in revision, in the Court or authority, which passed the orders. Sub-section (2) makes the provisions of Limitation Act, 1963 inapplicable for initiation of action under sub-section (1). In our view, except as provided in S.9-A, no power is available to re-open proceedings which have attained finality, that too, at the instance of declarants or other affected parties, as can be seen from the discussion *infra*. None of the parties placed reliance on S.9-A of the Act, before us. S.9-A has no application to the present case as the State was opposed to re-opening of the Ceiling proceedings which had attained finality in 1976. Kastopa filed a petition before the LRT, after the disposal of W.A.1420/1987 on 25.1.1993, on the ground that there was no enquiry held as contemplated u/s.13 of the Ceiling Act; the PTs had already become owners with effect from 1.1.1973 by virtue of statutory declaration; and the owner of the lands cannot surrender lands held by the PTs under the Ceiling Act. Kastopa did not however

allege fraud, mis-representation or suppression of facts. None of the alleged PTs filed any application to re-open Ceiling proceedings at any time although they supported the plea of Kastopa. We are therefore of the view that S.9-A introduced by the above amending Act cannot come to the aid of the petitioners or Kastopa.

Concluded proceedings under the Ceiling Act cannot be re-opened:

30. I n **KISHANDAS KANHAIYALAL v. STATE OF MAHARASTRA (13 supra)**, the appellant was found to be holding surplus agricultural land under the Maharastra Agricultural Lands (Ceiling on Holdings) Act, 1961. He contended that one Om Prakash had crystalized his right to be a tenant in respect of a portion of the appellant's land holding and that if that portion is excluded, the appellant will not be a surplus landholder. Supreme Court rejected the said contention and held at paras 2 and 3 :

> *"2. We do not find any force in either of the contentions. It is admitted in his claim statement that he claimed ownership over all the properties. It is also to be seen that when proceedings were initiated to determine surplus land, Om Prakash sent a representation claiming the lands as tenant and when it was rejected, he allowed the proceedings to become final. By side wind Om Prakash initiated proceedings before the Mamlatdar under the Tenancy Act claiming to be a tenant. In those proceedings State was not a party. He was found to be a tenant under the appellant and he was said to be in possession of lands. It is also claimed that the appellant filed an application before the competent authority that Om Prakash was in unauthorised occupation and the authority found against the appellant.*
>
> *3. On the above said facts, it is contended that as Om Prakash was in possession of the land and the appellant had no right over those lands under the Tenancy Act, he lost his right as an owner. Therefore, self same land cannot be included as high holding. We do not find any force in this contention. As seen, all the proceedings were initiated by Om Prakash only after the appellant submitted his statement claiming those*

properties. He allowed the orders made under the Act rejecting his claim as tenant to become final. The self same land would not be excluded on the premise that Om Prakash became deemed owner/tenant by operation of orders made under Tenancy Act. Therefore, without going into the legality of the finding recorded by the tribunals under Tenancy Act, the appellant remains to be the owner so far as the Ceiling Act is concerned and, therefore, the land cannot be excluded from his ownership or holding nor liberty be given to surrender the land said to be in the possession of Om Prakash."

31. In **UJAGAR SINGH AND OTHERS V. STATE OF PUNJAB AND OTHERS (14 supra)**, the Collector exercising powers under the PEPSU Tenancy and Agricultural Lands Act, 1955 determined surplus land of the respondents therein claiming through one Inder Singh at 18.82 Standard Acres by proceedings dated 28.5.1960. The order was not appealed. Notice of surrender was given on 3.6.1961 calling upon the respondents to deliver possession of the aforesaid surplus land within 10 days from the date of the receipt of the notice. In the meantime, possession of surplus land was taken by the State under acknowledgment. Subsequently, consolidation proceedings took place in 1961-62 and it was found that the declarant Inder Singh was having a lesser extent than the prescribed Standard Acres under the Act. So he filed an application before the authorities under the Act to re-determine his holding. The application was rejected. He thereafter filed a writ petition in the High Court which set aside Government orders on the ground that he was found having lesser land than the prescribed Standard Acres under the Act, as determined in consolidation proceedings. Therefore, the surplus land was required to be re-determined and restituted. The State challenged the same in the Supreme Court. The Supreme Court reversed and held at para 4:

" The question is whether the view taken by the High Court is correct in law ? When the standard acres which Inder Singh

was entitled to retain were determined and surplus land of an extent of 18.82 standard acres was determined by order dated 28.5.1960, and that order having been allowed to become final, would it be open to Inder Singh or any person claiming title through him to seek re-determination ? When they had not challenged the order and subsequently in the consolidation proceedings he was found to hold less extent than the prescribed standard holding, are they entitled to re-determination ? We are of the considered view that it is impermissible. It would be open to Inder Singh or any person claiming title under him to have challenged the correctness of determining surplus land by filing appeal before the appropriate forum. Admittedly, no steps had been taken. On the other hand, the order was allowed to become final and possession of the surplus land of 18.82 standard acres was taken over as admitted by Inder Singh by proceedings dated 12.7.1961. The land was simultaneously redistributed to the landless persons as per the scheme of the Government who are the appellants before this Court. Having allowed that order dated 28-5-1960 and the proceedings of delivery dated 12.7.1960 become final, it would not be open to either Inder Singh or anybody on his behalf to claim re-determination. The view of the High Court is clearly illegal." (emphasis is added)

32. In **KONDA VENUGOPALA RAJU v. STATE OF A.P**.(15 supra), the petitioner therein filed a declaration in respect of certain lands forming part of his holdings and requested for exclusion of lands from his holdings. The LRT found that the family of the declarant was holding surplus land in excess of the ceiling area on the notified date. This was confirmed by the High Court in revision. Thereafter, the petitioner was asked to surrender the excess land. He filed an application before the Land Reforms Tribunal, Eluru seeking appointment of a Commissioner stating that an extent of Ac.5.66 cents is non-agricultural land and must be excluded from his holding. The LRT dismissed the application and the same was confirmed by the High Court. The Supreme Court concurred and held at para 5 :

".....Once the proceedings have become final and the

landowner has been declared to be in excess of the prescribed ceiling area of the land, then the correctness of the same cannot be questioned once over. The surrender proceedings are in the nature of execution of the surplus land declared by the authorities. The declarant cannot set up a new plea or plead afresh that declarant's lands are not agricultural lands and are, therefore, required to be excluded from his holding. The reason is obvious that under Section 9, once the order of determining the surplus land has become final, the person holding the land in excess of the prescribed ceiling area is liable to surrender the excess land held by him as enjoined under Section 10 of the Act. At that stage, there is no further provision under the Act to reopen the order passed under Section 9 except to correct clerical or arithmetical mistakes. This new plea set up by the declarant cannot be characterized either as a clerical or arithmetical mistake but is simply an attempt to reopen the order of declaration of surplus land and to have the compensation re-determined on the basis of new facts. It is impermissible under the Act." (emphasis is added)

33. In **Y. LALITHAMMA V. THE SPECIAL TAHSILDAR, LAND REFORMS, KURNOOL (25 supra)**, after adjudication by the LRT that a declarant was a surplus holder of land under the Ceiling Act; lands were surrendered and accepted, her daughters laid a claim that certain lands were given to them as 'Pasupu Kumkuma' gift and should be excluded from the holding of the declarant. The LRT allowed the said application but its order was set aside by the appellate Tribunal. The daughters of the declarant challenged the same in the High Court. This Court held at para 2 :

"2. The learned counsel for the petitioner has contended that the correct classification of the land could be gone into even now notwithstanding the finality attained by the orders passed by the Tribunal determining the surplus land as 1.1652 S.H. It is difficult to uphold this contention. Obviously, successive petitions cannot be filed to reopen the matters which have become final and it does not make any difference whether the dispute which is now sought to be raised relates to the nature of the land or to some other aspect. It is not as if there is any

arithmetical or clerical mistake which needs to be rectified under Rule 16(5). The so called mistake in the computation of the holding which is now sought to be rectified is not of such a nature which would fall within the purview of Rule 16(5). In fact, the determination of the question depends upon an investigation of facts. Unless there is express power conferred by the Act, the power to review and reopen the proceedings that have become final does not in-here in the Tribunal nor can it be inferred by implication. I do not therefore see any illegality in the order of the Land Reforms Appellate Tribunal." (emphasis is added)

34. In **PONNAM CHANDRASEKHAR RAO v. STATE OF A.P.** (16 supra) was held at para 1 :

"When once the final determination of the holding has been completed and the surplus land held by the family is finally determined, at the stage of surrender proceedings, which are in the nature of execution proceedings, neither the declarant nor any other person can be permitted to set the clock back by raising fresh points from time to time. Otherwise, there can be no finality to the proceedings and the very purpose of the Act will be defeated."

35. In **MERLA (BOLLA) JOGAYAMMA AND ANOTHER V. STATE OF A.P**. (17 supra), after orders under S. 9 of the Ceiling Act were passed determining excess holdings of declarants and the orders had become final, petitioners therein contended that a portion of the said land should be excluded from their holdings under S. 23 (g) of the Ceiling Act on the ground that the said land was already donated to the A.P. Bhoodan Yagna Board. The High Court held at para 6 as follows :

"…..That the orders passed by the concerned Tribunals Under Section 9 of the Land Reforms Act determining the excess holdings of the petitioners in both the cases had become final and the declarants did not seek exclusion of the present lands in dispute from their holdings on the ground that the said lands were already donated to Bhoodan Yagna Board. It is also clear from the facts of these cases that surrender proceedings were also initiated and the lands to be surrendered by the declarants

in both the cases towards their excess holdings were also identified and steps were initiated for taking possession of such lands by way of surrender towards their excess holdings. Inasmuch as the orders determining the excess holdings of both the declarants had already become final, it is not open to the declarants to raise the plea under Rule 16(7) of the Act (sic. Rules) for exclusion of any land from their holdings during the course of the surrender proceedings which were already initiated by the concerned authorities under the Act."

36. In **LAXAMA REDDY v. STATE OF A.P. (22 supra)**, after orders of the LRT determining the holding of the declarants became final, declarants filed a petition under Rule 16(5)(b) of the Rules under the Ceiling Act, for rectification of an alleged mistake in the computation of their holding i.e., some portion of their land has to be excluded from their holding as it is covered by a certificate u/s. 38-E of the Tenancy Act. This contention was rejected by a Division Bench of this Court holding that if the primary Tribunal committed a mistake in not deleting the land covered by S. 38-E of the Tenancy Act, the declarants have to agitate the same in the appellate Tribunal or in the revision petition before the High Court against the order of the appellate Tribunal. At para 14, the Division Bench held :

"It is common knowledge that finality has to be attached to the judicial proceedings at every stage unless the finding is challenged in the appropriate forum. When the holding of the declarant was decided and when the said order was permitted to become final, it is not known as to how the same can be questioned in surrender proceedings and surrender proceedings shall be restricted only to the points that are permitted to be raised in the said proceedings. During the surrender proceedings also if the correctness or otherwise of the fixation of the holding of the declarant was permitted to question, there can never be any end or finality to the proceedings determining the holding of the declarant."

37. From the catena of unvarying binding authority referred to, it is clear that when once final determination of the holding has been completed and surplus land held by

the family of a declarant finally determined, at the stage of surrender proceedings, which are in the nature of execution proceedings, neither the declarant nor any other person can be permitted to reverse the clock by raising fresh points. Of course, these decisions were rendered before S.9-A was introduced in 2012. We are of the view that (except to the extent and in the manner provided in S.9-A, discussed above), no express power is conferred by the Ceiling Act to review and reopen proceedings that have become final and no such power inheres in the LRT nor could be inferred by implication. In the absence of a power to re-open proceedings (which have attained finality after dismissal of CRP Sr.24698 of 1976 by the High Court), *dehors* S.9-A of the Ceiling Act, they cannot be reopened under any circumstances including on the ground that claims of alleged protected tenants u/s.38-E of the Tenancy Act were not considered by the LRT (before it declared Kastopa to be a surplus holder, by its order dated 9.12.1975).

38. The above conclusion of ours is fortified by the specific legislative mandate in S. 20(3) of the Ceiling Act which enacts that orders passed by the appellate tribunal are final subject to revision under Section 21 of the said Act. The alleged protected tenants never challenged the order dated 09-12-1975 of the LRT by preferring any appeal therefrom to the Land Reforms Appellate Tribunal and had allowed it to become final. Therefore on the dismissal of C.R.P.S.R.No.24698 of 1976 on 28-04-1976, we hold the land ceiling proceedings to be impregnable.

No collateral attack permissible :

39. We also conclude that finality enjoined by Ceiling Act provisions to the computation of holding of the declarant (in view of the order dated 6.4.1976 in LRA No.10 of 1976 of the Land Reforms Appellate Tribunal

which was confirmed in CRP Sr.24698 of 1976) cannot be attacked or eviscerated collaterally, in separate proceedings, at the instance of the declarant Kastopa or at even the instance of the alleged protected tenants.

40. In **Rafique Bibi Vs. Sayed Waliuddin (48 supra),** the Supreme Court held at para 8 p.291:

> *"A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a decree is to have set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree.. **A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings**."(emphasis is added)*

41. In the order dated 25.1.1993 in WA No.1420 of 1987, the Division Bench observed that there is no surrender by the alleged protected tenants (R-1 to R-24 therein); that there is a statutory declaration of the ownership of lands held by the protected tenants as per S. 38-E of the Tenancy Act which came into effect from 01-01-1973; and that they acquired protected tenancy rights under S. 37-A and that their rights under S. 38-E of the Tenancy Act were not extinguished. While dealing with proceedings under the Ceiling Act, the Bench no doubt said that those proceedings did not attain finality in view of S.13 of the Ceiling Act; that the declarant could not surrender the lands of the respondents in the writ appeal as they had become owners by virtue of the statutory declaration; and proceedings under the Ceiling Act dated 9.12.1975 in respect of Kastopa are of "no consequence". This Court however did not conclude or hold that the LRT, when it computed the excess holding of

the declarant Kastopa in its order dated 09-12-1975 (which was confirmed by order dated 06-04-1976 in L.R.A.No.10 of 1976 and later in order dated 28-04-1976 in C.R.P.S.R.No.24698 of 1976), acted without inherent jurisdiction or that proceedings under the Ceiling Act were a nullity. In our opinion, observations of this Court in W.A.1920/1987 cannot be construed as nullifying the order dt.9.12.1975 of the LRT determining the holding of Kastopa (which was confirmed by the dismissal of the CRP.S.R.24698/1976). If so construed, it would tantamount to permitting a collateral attack on the said orders which is impermissible. Therefore the observations of this Court in WA.1920/1987 cannot be availed by the alleged protected tenants or Kastopa to seek reopening of proceedings under the Ceiling Act in respect of the holding of Kastopa.

Proceedings of the RDO, Chevella granting certificates u/s.38-E of the Tenancy Act on 25.4.1995 in respect of lands surrendered by Kastopa to the State in 1976 are without jurisdiction and void.

42. When adjudication by the Ceiling authorities as to the holding of the declarant had attained finality and consequent immutability, ***in respect of the lands surrendered and accepted by the State thereunder***, authorities under the Tenancy Act cannot grant certificates u/s.38-E of the Tenancy Act. If such power is countenanced, the vesting u/s.11 as mandated by the Ceiling Act cannot operate and there will be no finality to proceedings under S.9 of the Ceiling Act.

43. In **V. Swarajyalaxmi Vs. Authorized Officer, Land Reforms, Medak and Others**[59], certain land was mortgaged to the State Bank of India by its owners for obtaining loan. Subsequently part of such land was held by the Land Reforms Tribunal under the Ceiling Act to be

surplus and liable to be surrendered to the Government. State Bank of India challenged the said order before the Land Reforms Appellate Tribunal which allowed the appeal and remitted the matter to the Land Reforms Tribunal. The Tribunal confirmed its earlier order. The Bank thereafter filed a suit for realization of the mortgage money which was decreed. It filed execution petitions for bringing the said property (part of which was found surplus) to sale. The Bank also challenged the order of the Land Reforms Tribunal declaring the portion of land mortgaged to it by the owners as surplus before the Land Reforms Appellate Tribunal. The appellate Tribunal, under the impression that under S.23 of the Ceiling Act, land mortgaged to the Bank was exempt from provisions of the Ceiling Laws, permitted the Bank to proceed with recovery of the money due to them against land which was found to be surplus at the hands of the declarant. The surplus land had already been taken over by the State under S. 11 of the Ceiling Act. On the strength of the order passed by the Land Reforms Appellate Tribunal, the Bank sought to bring the surplus land under Court auction sale. State opposed the sale contending that land which was sought to be sold had already been surrendered by the declarants and had vested in the States free from all encumbrances and was not liable to be sold in Court auction sale. The executing Court upheld the objection of the State and held that S. 23 of the Ceiling Act did not apply and in view of S. 11 of the Ceiling Act, the Bank could only have proceeded against the compensation amount, if any, payable to the land owners. The High Court held that the surrendered lands would have to be distributed among landless poor persons as envisaged by the Ceiling Act. The Supreme Court held that the Bank, as mortgagee of the land did not have any right to proceed against the property for realization of the mortgage money. It held that after vesting under S. 11 of

the Ceiling Act, declarants ceased to have any right or title over that land and that the Bank could proceed only against other property of the owner. This *ratio* applies to the present case *proprio vigore.*

44. We are therefore of the view, fortified by the curial authority referred to, that notwithstanding observations in the order dt.25.1.1993 in W.A.No.1420 of 1987, no jurisdiction is available to authorities under the Tenancy Act to grant certificates u/s.38-E of the Tenancy Act, in respect of lands which vested in the State u/s.11 of the Ceiling Act, on their surrender by the declarant Kastopa in 1975.

45. We hold that this Court in it's order dt.15.7.87 in W.P.4059 of 1982 and in the order dt.25.1.1993 in W.A.1420/1987 had directed a Tribunal (under the Tenancy Act), which had no jurisdiction to issue S.38-E certificates to persons claiming to be protected tenants, in respect of lands surrendered by Kastopa to the State on 13.10.1976. Therefore proceedings of the RDO, Chevella granting certificates u/s.38-E of the Tenancy Act on 25.4.1995 are without jurisdiction, void and inoperative.

46. I n **Gyanmandir Mahavidhyalaya Samity vs. Udailal Jaroli (30 supra)**, a direction was obtained from the High Court for disposal of the appeal by the Government, without bringing the factum of disposal of the said appeal to its notice. The Government passed fresh order in pursuance of such direction. Thereafter, both aggrieved parties filed writ petitions, which were partly allowed. The matter was carried by way of SLP and was disposed of ex-parte. On the strength of the ex-parte order of the Supreme Court, a fresh appeal was filed before the Chief Minister, which was allowed. The same was challenged in a writ petition, which was allowed. In appeal, the Supreme Court held that the jurisdiction of the

Government having been derived from the statute, it is obliged to confine its jurisdiction within the four corners of the legislation and the Government had no jurisdiction to entertain a fresh appeal and the orders passed on the basis of illegal proceedings would be *coram non-judice*.

47. We respectfully follow the above decision of the Supreme Court; and the decision in **Balvant N.Viswamitra v. Yadav Sadashiv**[60] which ruled (at para 9):

> "*The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.*
>
> ***10.** Five decades ago, in **Kiran Singh v. Chaman Paswan** this Court declared: (SCR p. 121)*
> *"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ... strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."*
>
> ***11.** The said principle was reiterated by this Court in **Hiralal Patni v. Kali Nath**. The Court said: (SCR pp. 751-52)*
> *"Competence of a court to try a case goes to the very root of the*

jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction."

48. On the aforesaid analyses, the extent of Ac.137.17 gts in Sy.No.35-37, 40, 42-47 and 53 (part) of Gachibowli village continues to vest in the State uninterrupted and the grant of certificates u/S.38-E of the Tenancy Act on 25.4.1995 by the RDO, Chevella in respect of Ac 8.20 gts in Sy.no.37, Ac.12.37 gts in Sy.no.40, Ac.11.32 gts in Sy.no.42, Ac.10.20 gts in Sy.no.43, Ac.18.23 gts in Sy.no.44 and Ac.10.31 gts in Sy.no.45 of Gachibowli village i.e., Ac.73.03 gts (which forms part of the land surrendered by Kastopa to the State) is without jurisdiction, null and void. Consequently, proceedings of the R.D.O, Chevella granting certificates u/s.38-E of the Tenancy Act on 25.4.1995 are proceedings *coram-non judice*, passed without jurisdiction and are declared as null and *void ab initio*.

49. Since the issue relates to lack of inherent jurisdiction, principles of *res-judicata* or constructive *res-judicata* do not apply and petitioners in CRP.No.6708/2003 cannot gainfully contend that orders in W.P.4059/1982, W.A.No.1420/1987, C.R.P.No.3755/1997, and W.P.No.3251/1998 would bind the State or respondents 8-72 in CRP.No.6708/2003. (see **CHANDRABHAI K.BHOIR VS. KRISHNA ARJUN BHOIR**[61], **CHIEF JUSTICE OF A.P. VS. L.V.A.DIKSHITULU (29 supra)**.

Ceiling Act provisions override provisions of the Tenancy Act

50. The Ceiling Act was enacted in 1973, subsequent to the Tenancy Act, enacted in 1950.

51. In view of S.3 (i) (iv), a person holding land as a

tenant is covered by the Ceiling Act. S.3 (t) includes a person who is deemed to be a tenant under any Tenancy Law for the time being in force (last part). The Ceiling Act also extinguishes the right, title and interests of the tenant in the same manner as it extinguishes that of a landholder. Both are subject to the same ceiling limits and determination thereof and to same restrictions and disabilities including those under S. 7 and 17 of the Ceiling Act. In fact, if the tenant surrenders or is deemed to have surrendered any land it reverts to the owner under S. 12 (1) of the Ceiling Act. S. 28 of the Ceiling Act gives overriding effect to its provisions against any existing law.

52. The object of the Tenancy Act is only to regulate the *inter se* relationship between the landlord and tenant and has a limited socio-economic compass *vis-à-vis* the Ceiling Act, which is meant for the greater good of a greater number of people to whom excess land above the ceiling limit is to be distributed by the State. Under the Ceiling Act, the State has a statutory obligation to take possession of surplus land from landholders and distribute the same to land less poor u/S.14. This obligation cannot be abdicated or abandoned. Therefore, we are of the view that provisions of the Ceiling Act prevail over provisions of the Tenancy Act, particularly in view of S.28 of the Ceiling Act.

53. Hence, a protected tenant is covered by the Ceiling Act and bound by this Act, including S.4 prescribing the ceiling limit; S. 7 and S.17 prohibiting or invalidating certain transfers, either before commencement or after commencement of the Ceiling Act, till determination of the holding and taking possession of the land in excess of ceiling limit; and publication of notice under S. 16. S. 13 clarifies the position by expressly conferring the power (on authorities under the Ceiling Act), to determine whether any land, if so, the extent of land transferred to the

protected tenant under S. 38-E and to exclude the same. In the absence of such provision, the land would have been included in the holding of both the landholder and tenant by virtue of the explanation to S.3 (i) and the consequences under S. 12 would have followed.

54. Sri Venkataramana for the petitioners in CRP. No.6708/2003 urged that there is a *non obstante* clause in S.104 of the Tenancy Act and even though there is a similar *non obstante* clause in S.28 of the Ceiling Act, the scope of both statutes is different and therefore notwithstanding any order passed by the LRT, the rights under the Tenancy Act in respect of the petitioners in C.R.P.No.6708 of 2003 are not extinguished. He contended that both statutes are intended to prevent concentration of wealth (agricultural land) in the hands of rich landholders; and that the Tenancy Act enacted on 10-06-1950 is intended to protect tenants of agricultural land and regulate their relations with the landholders whereas the Ceiling Act which came into force on 01-01-1975 was intended to fix a ceiling on agricultural holdings and take over the surplus lands for distribution to landless poor. Although this argument appears attractive at first blush, it does not on deeper reflection, commend acceptance. The words “landholder consents to sell” and “agreed between them” occurring in the first part of S.38-A show that it only recognizes the private right of parties to sell and purchase and this facilitation is dependent on volition of the parties, unlike s.38E. If the contention of the petitioners in CRP.No.6708/2003 is accepted, then the contract between the land holder Kastopa and the alleged protected tenants u/s.38-A would prevail over the Ceiling law. Contractual freedom has to necessarily yield to the statutory prohibition in S.7 and 17 of the Ceiling Act. In our view, since both these statutes have *non obstante* clauses, such clause in the later statute i.e. the Ceiling Act will override the one in the former statute i.e. the Tenancy

Act (**AP State Financial Corporation Vs. Official Liquidator**[62]**)**. Therefore the contention of Sri Venkataramana is rejected.

Re: S.13 of the Ceiling Act

55. Relying on S. 13 of the Tenancy Act and the judgments in **State of Andhra Pradesh Vs. T.Yadagiri Reddy (3 supra)** and **B.Hanimi Reddy Vs. State of A.P.**[63]**,** Sri Venkataramana, learned Senior Counsel for the petitioners in C.R.P.No.6708 of 2003 contended, that the Land Reforms Tribunal before finalizing the holding of Kastopa, ought to have determined in the first instance, whether in such land held by the declarant, there were any protected tenants and if so whether the land held by such protected tenant stood transferred to him under S. 38-E/S.38-A of the Tenancy Act; the extent of such land; and then ought to have excluded such land from the holding of the declarant. As the Land Reforms Tribunal failed to do so, its order is vitiated.

56. S.13 of the Ceiling Act enjoins:

"**13. *Special provisions for protected tenant:***

(1) Where the holding of any owner includes any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof stands transferred to the protected tenant under Section 38-E of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950, and if so, the extent of land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.

(2) Subject to the provisions of sub-section (1), the relevant provisions of this Act aforesaid shall apply in the matter of such land by such protected tenant."

57. There is nothing on record to show that the alleged protected tenants filed any objections to the declaration filed by Kastopa under the Ceiling Act or to the surrender statement proposed by it inspite of the public notice having been given by the LRT . Moreover Khanamet Baliah and 9 others, claiming to be protected tenants filed a compromise petition dt.30.5.1975 before the LRT stating that they are not pressing their claim u/s.38-E of the Tenancy Act and had validly surrendered their protected tenancy rights in favor of Kantilal Seth of Kastopa and his predecessors in interest (the validity of which is now disputed by the petitioners in CRP.6708/2003). In Proceedings No. LLRW/47/1975 dt.31.5.1975, the LRT passed orders holding that names of the protected tenants had been deleted from the Tenancy Register of 1951; that the same names are found in the Tenancy Register prepared in 1958 (u/S.37-A of the Tenancy Act); that the surrender of protected tenancy rights was accepted by the Tahsildar; that the application of Gaddi Maisaiah and others filed u/s.38E is dismissed as they have no locus standi after surrendering their protected tenancy rights over the subject lands in 1965 and 1966 before the Tahsildar, Hyderabad West. As a consequence, it is not correct to contend that the LRT had not considered the rights of alleged protected tenants before computing the holding of the declarant. Even if the said order is flawed on the ground that the LRT/ Addl.Revenue Divisional Officer failed to verify whether provisions of S.19 of the Act were strictly followed, before the alleged surrender is made by the protected tenants, it would not render the determination a nullity. Admittedly, later the LRT passed final orders u/S.9 of the Ceiling Act on 9.12.1975 declaring Kastopa as a surplus holder of 2.2862 SH; and this determination has attained irrevocable finality.

58. In **T.Yadagiri Reddy's case (3 supra)**, the father of the petitioners T.Papi Reddy was a protected tenant and they had themselves filed declarations under the Ceiling Act including the lands in their occupation in their holding and were declared non-surplus holders. But later those very lands were sought to be included in the holdings of the landholders. The Tribunal rejected their contentions. The appellate Tribunal partly allowed their appeal holding that only the land in respect of which ownership certificates were granted under S. 38-E of the Tenancy Act should be excluded from the holding of the declarant/landholder and dismissed it in respect of land for which certificate under S. 38-B of the Tenancy Act was issued to the protected tenants. A learned single judge of this Court held that the Land Reforms Tribunal should exclude from the holding of the declarant/land holder, not only lands held by a protected tenant in respect of which a tenant was granted ownership certificate under S. 38-E of the Tenancy Act but also lands held by the protected tenant which are covered by S.38-B of the Tenancy Act. It held that the incidents which follow in respect of a certificate granted under S. 38-E or under S. 38-B of the Tenancy Act are one and the same i.e. conferring absolute ownership rights in favour of a protected tenant and that even though S. 38-B was not specifically mentioned in S. 13, the lands covered by S. 38-B of the Tenancy Act should also be excluded. This decision was confirmed by the Supreme Court.

59. The decisions cited by Sri Venkataramana are clearly distinguishable because in the said cases, unlike in the present case, proceedings under the Ceiling Act in respect of landholder (i.e. Kastopa) had not attained finality and these decisions did not hold that proceedings against the landholder which had attained finality could be reopened and long afterwards on the ground that protected tenants had claimed rights under S. 38-E or 38-

A of the Tenancy Act. We have already noticed that such reopening is not permissible in any eventuality, in view of decisions of this Court and of the Supreme Court, referred to supra. The Supreme Court in **Yadgiri Reddy** while holding that the Tribunal under the Ceiling Act is not prohibited to decide about land covered u/s.38-B while passing order u/s.13, did not decide whether the transaction u/s.38-B in the said case is legal and not prohibited by the Ceiling Act or any other law. It only considered the question whether the land so covered is liable to be excluded from the holding of the declarant. As rightly contended by the counsel for R8-72, the said decision is to be construed as a *sub-silentio* judgment and cannot be treated as law declared within the meaning of Art.141 of the Constitution of India. [see **A-One Granites** (42 supra)]

Should LRT await the decision of Tenancy Authorities on issues relating to grant of S.38-E certificate/ S.38-A certificate ?

60. Under S.13 of the Ceiling Act, the jurisdiction to make an enquiry and ascertain entitlement of protected tenants and the extent of the land which statutorily stood transferred to the protected tenant, is conferred on the LRT constituted under the Ceiling Act. This is the consecrated function of the Tribunal under sub sections (2) of S.38-E of the Tenancy Act. In view of provisions of S.13 of the Ceiling Act obligating the LRT to first determine these questions, the jurisdiction of the Tenancy Tribunal, in our view, stands *pro tanto* excluded, as the legislative intention is clearly to confer exclusive jurisdiction on the LRT. The LRT need not therefore await the decision of the Tenancy Tribunal as contended by the counsel for the petitioner. The LRT inheres the jurisdiction to decide all questions that arise in the course of determination of the ceiling limit, i.e., whether there is any protected tenant in

respect of the land in question; whether there is any surrender by the protected tenant; whether the compromise entered or surrender by the protected tenant may be accepted, etc. A contrary construction/ interpretation would lead to an anomalous position; would render the LRT dys-functional; and postpone effectuation of the Ceiling legislation to an unpredictable and infinite point in time.

61. In a particular case, multiple questions may arise, like whether a transfer is made to defeat the objects of the ceiling law; whether a partition effected is valid; whether an adoption is valid; whether a dissolution of marriage is valid; whether a particular land is agricultural land etc. Such questions in the normal course have to be decided only by the civil court or other authorities. But, all such questions fall within the jurisdiction of the LRT in view of S. 7 (7) of Ceiling Act and the LRT is legislatively empowered to decide all such issues. In our view, similarly u/s.13 of the Ceiling Act, the LRT is conferred the jurisdiction to determine issues whether a land or part thereof stood statutorily transferred to a protected tenant. Even otherwise, it would incongruous to hold that the LRT may not decide these questions in the absence of a specific provision in the statute and must relegate the parties to have them determined before the appropriate forum under the general law and keep the ceiling proceedings in abeyance till all such questions are fully and finally determined by the hierarchy of authorities or courts. In such case, it would be easy for anybody to raise these questions and have proceedings before the LRT kept in abeyance for an indefinite period. Such a construction would render the Ceiling Act unworkable and defeat the objects of the Act.

Conclusions on issues 5, 7and 8 formulated by the Supreme Court:

62. On the analysis above, we hold on issue No.5 framed by the Supreme Court that lands covered by protected tenancy rights (though liable to be excluded from the holding of Kastopa under the Ceiling Act first in view of S.13, but were not so excluded in 1975) cannot be excluded subsequently by authorities under the Ceiling Act, at the instance of protected tenants or the landholder. We hold on issue No.7 that surplus land to an extent of Ac.137.17 cts. in Sy. Nos.35 to 37, 40, 42 to 47 and 53 of Gachibowli village had irrevocably vested in the State under Section 11 of the Ceiling Act and any transaction by way of sale or otherwise in respect of the said land by the alleged protected tenants and the pattedars is void *ab initio*, of no legal effect or consequence and inoperative. We also hold on issue No.8 that Ceiling proceedings had attained finality with the dismissal of C.R.P.S.R.No.24698 of 1976 on 28-04-1976 and the same could not be reopened in or *q u a* writ proceedings or in collateral proceedings.

63. In view of the patent lack of jurisdiction, to reopen proceedings under the Ceiling Act which attained finality in 1975/1976, we hold that the order dated 28.4.2001 in C.C.No.W/264/75 of the Land Reforms Tribunal-RDO, Chevella as confirmed in the order dated 28.4.2001 in LRA No.16 of 2001 dated 2.9.2002 is without jurisdiction and a nullity. In exercise of our jurisdiction under S. 21 of the Ceiling Act, we quash the said orders. CRP.No.1200/2003 filed by the State is accordingly allowed.

(b) Analyses of Issues 1-4, 6, 9 and 10 framed by the Supreme Court:

64. The issues are :

"1. *Whether the respondents or their predecessors*

were, at any stage, recorded as protected tenants in respect of land measuring Ac.190 Acres 17 Gts, situated in Sy. Nos.35, 36, 37, 40, 42-47, 50-53 of Gachibowli Village, Seralingampally Mandal, Ranga Reddy District, Hyderabad or any portion thereof?

2. *Whether the findings recorded by the RDO in his enquiry report dt: 27-07-1981 in respect of (a) the status of respondents as protected tenants under S. 37-A and (b) absence of proof of surrender in accordance with Section 19 of the Act, were challenged by Kastopa Corporation ? If not whether the said findings can be challenged by the successors in interest of Kastopa Corporation?*

3. *In case, questions No.1 and 2 above, are answered in the affirmative, whether the respondents or their predecessors had validly surrendered their tenancy rights in accordance with the procedure prescribed by law. If so, in which proceedings and qua which survey numbers, was the surrender made?*

4. *Whether the sale of plots from the year 1986 onwards by M/s.Kastopa Corporation and the protected tenants in favour of the appellants and the petitioners in the concerned SLPs are valid having regard inter-alia to the provisions of the Tenancy Act?*

5. *Whether there was conversion of land use for house sites and non-agricultural purposes in respect of the lands in question in accordance with law and if so, what is the effect of such conversion on the rights of the parties and from which date would the conversion be effective ?*

6. *Having obtained a consent order dated 20-09-1999 (Justice A.S. Bhate's order) in W.P.No.14708 of 1999 for grant of rights under Section 38 (a) in respect of land in Sy. Nos.46, 47 and 53 (Paiki) to the extent of 37 acres, whether the respondents could mutually agree for issue of 38-A sale Certificates qua land in Sy. Nos.51, 52 and part 53 sold to the petitioners herein for valuable consideration? And*

7. *Whether the respondents are entitled to certificates Us/38-A over Sy. Nos.51, 52 & 53?*

65. The declarant Kastopa had asserted in its declaration dated 09-04-1975 filed before the Land Reforms Tribunal, Hyderabad West Division that it holds an extent of Ac.190.17 gts. (equivalent to Ac.190.42 cts) in Sy. Nos.35 to 37, 40, 42 to 47 and 50 to 53 of Gachibowli Village. By order dt.9.12.1975 passed u/s.9 of the Ceiling Act, the LRT determined that Kastopa was a surplus holder of 2.2862 SH. Of this extent, Ac.137.17 cts. in Sy. Nos.35 to 37, 40, 42 to 47 and 53 was surrendered by Kastopa on 05-05-1976 and possession was taken by the State on 13-10-1976. On 22-03-1991, compensation of Rs.5000/- was also sanctioned to be paid to Rasiklal Kamdar, partner in Kastopa for the surrendered extent of land, under S. 15 of the Ceiling Act. If Land Ceiling proceedings cannot be reopened (as we have earlier herein concluded), the extent of Ac.137.17 cts. stands vested in the State leaving an extent of Ac.53.25 cts only (Ac.190.42 cts less Ac.137.17 cts) as non-surplus/retainable land in the hands of the declarant. This extent of Ac.53.25 cts includes an extent of Ac.17.00 in Sy.No.50 of Gachibowli Village in respect of which the petitioners at no point of time claimed to be protected tenants. Therefore if this extent of Ac.17.00 in Sy.No.50 is

excluded, the balance extent which remains is, Ac.36.25 cts in Sy.No.51, 52 and 53.

66. We have already recorded the that the order dt.25.4.1995 granting ownership certificates under S. 38-E of the Tenancy Act in respect of Ac.73.03 gts. in Sy. Nos.37, 40, 42 to 45 of Gachibowli village, is null and void.

67. In our view, only in respect of the extent of Ac.36.25 cts (arrived at as mentioned in para 65 supra) which the declarant Kastopa was entitled to retain under the Ceiling Act, the question survives as to whether the petitioners in C.R.P.No.6708 of 2003 have any rights and could be treated as protected tenants in respect of the said extent, of Ac.36.25 cts; and, if so, whether they would be entitled to grant of an ownership certificate under S. 38-E or a sale certificate under S. 38-A of the Tenancy Act. It is only in respect of this land that issues 1 to 4, 6, 9 and 10 framed by the Supreme Court need to be considered by this Court, in view of our earlier conclusion as to the non-derogability of the proceedings under the Ceiling Act which had attained irreversible finality.

68. Before we deal with the above issues framed by the Supreme Court, we take note of the relevant provisions of the Tenancy Act in this regard.

- S.2 (h) of the Act reads:

  "*family holding*" means *"a holding the area of which is equal to the area determined for any class of land under Section 4 as the area of a family holding for the class of land of which the holding consists in the local area in which it is situate."*

- S. 4 enacts:

  " **4. Determination of Area of Family Holdings:-**

(1) Subject to in accordance with the provisions of this section the Government shall determine in the manner prescribed for all or any class of land in any local area, the area of a family holding which a family of five persons including the agriculturist himself, cultivates personally according to local conditions and practices and with such assistance as is customary in agricultural operations and which area, will yield annually a produce the value of which after deducting fifty per cent, therefrom as cost of cultivation is Rs. 800 according to the price levels prevailing at the time of determination.

(2) The Government shall determine the extent of land which shall be regarded as a family holding for each class in each kind of soil in all the local areas which may be determined for 1[the area to which this Act extends] subject to the limits specified below, shall notify in the 2[Official Gazette] the 'local areas' and the extents so determined not later than six months from the date on which the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1954, comes into force and shall lay a copy of the Notification before the Legislative Assembly if it is in session, and if it is not in session when it next reassembles.

Limits:—

(1) Wet land-Single Crop each year, all kinds of soils:	
(a) Classification of 8 annas or above:	6 Acres
(b) All other classes:	9 Acres
(2) Dry Land;	
(a) Black Cotton or laterite soils:	
(i) Class I with soil classification of 8 annas or above:	24 Acres
(ii) All other classes:	36 Acres
(b) Chalka soils:	
(i) Class I with soil classification of 8 annas or above:	48 Acres
(ii) All other classes:	72 Acres

Provided that the Government may, by general or special order direct that the limits of the family holdings specified in this sub-section, shall for any local area be varied if the Government is satisfied that such variation is necessary or expedient for ensuring that the value of produce after deducting fifty per cent, therefrom as cost of cultivation is Rs. 800]."

· S. 34 states as follows:

"***Section 34 - Protected tenants***

(1) A person shall, subject to the provisions of sub-sections (2) and (3), be deemed to be a protected tenant in respect of land if he—
(a) has held such land as a tenant continuously—
(i) for a period of not less than six years, being a period wholly included in the Fasli years 1343 to 1352 (both years inclusive), or
(ii) for a period of not less than six years immediately preceding the 1st day of January, 1948, or
(iii) for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th October, 1943), and completed before the commencement of this Act, and
(b) has cultivated such land personally during such period:

Provided that where the landholder is a minor or is serving in the Naval, Military or Air Forces in India, the tenant shall not be deemed to be a protected tenant if before the expiration of one year from the date on which the minor attains majority or the landholder ceases to serve in the said forces, the landholder gives three months' notice in writing intimating his decision to terminate the tenancy if in good faith he requires the land to cultivate personally:

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability the tenant shall not be deemed to be a protected tenant if before the expiry of one year from the death of the land-holder, the person who succeeds to the land gives three months notice in writing intimating his decision to terminate the tenancy if in good faith he requires the land to cultivate personally.
Explanation:— Where the land is held under more than one joint landholders the last two provisos shall not apply unless such landholders are subject to a disability specified in the said provisos.]
Explanation I:— If the person who held such land as a tenant on the date of expiry of any of the three qualifying periods mentioned in clause (a) came to hold the same by inheritance or succession from another person who so held the land or if he has held such land as tenant and is an heir to such other person included the period during

which such other person held such land as a tenant shall be included in calculating such qualifying period.

Explanation II:— If the person who held such land as a tenant on the date of expiry of any of the three qualifying periods mentioned in clause (a), held as a tenant at any time within six years before the said date from the same landholder in the same village any other land which he cultivated personally, the period during which he held such other land shall be included in calculating such qualifying period.

Explanation III:— Where any land is held by two or more persons jointly as tenants all such persons shall, if any of them cultivated and continues to cultivate such land personally and if the other conditions specified in this section are fulfilled, be deemed to be protected tenants in respect of such land.

(2) Where more than one person would be entitled under sub-section (1) to be deemed to be protected tenant in respect of any land, then, notwithstanding anything contained in that sub-section, the only one of such persons entitled to be so deemed shall be—

(a) the person whose qualifying period is the period specified in sub-clause (1) of clause (a) of that sub-section, or

(b) if there is no such person, the person whose qualifying period is the period specified in sub-clause (2) of that clause.

(3) A person who at the commencement of this Act is no longer in possession of land in respect of which he is deemed under sub-section (1) to be a protected tenant shall, notwithstanding anything contained in that sub-section, not be deemed to be a protected tenant in respect of such land if—

(a) he was evicted from such land in pursuance of a decree or order of a competent Court, or

(b) such land is being cultivated personally by the landholder 2[for atleast one year before the commencement of this Act, or after the land was surrendered to the landholder by the tenant], or

(c) a permanent structure has been built by the landholder on such land, or

(d) such land has been permanently diverted by the land-holder to non-agricultural uses.

Explanation:— In sub-sections (2) and (3) of this section and in Sections 35, 36 and 37 references to a person include references to such two or more persons as are referred to in Explanation III to sub-sec. (1).

- S. 37 enjoins*:*

“Section 37 - Persons not entitled under Section 34 deemed in

certain circumstances to be protected tenants:

(1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under Section 34, shall, on the expiration of one year from such commencement or, the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant:

Provided that where the landholder is a minor or a person serving in the Naval, Military or Air Forces of India, he shall make the application for declaration before the expiry of one year from the date on which the minor attains majority, of the landholder ceases to serve in the Naval, Military or Air Forces of India:

Provided further that where the landholder is a person permanently incapable of cultivating the land by reason of mental disability, the person who succeeds to the land on the death of the said landholder shall make the application within one year from the date on which he succeeds to the land.

Explanation:— Where the land is held under more than one joint landholders the last two provisions shall not apply unless such landholders are subject to a disability specified in the said provisos.]

(2) If after enquiring in the prescribed manner into such application, the Tahsildar refuses to make such declaration and his decision is not set aside by the Collector on first appeal or by the Board of Revenue on second appeal, the tenant shall be deemed to be a protected tenant.

(3) The rights as a protected tenant of a person deemed under subsection (1) or sub-section (2) to be a protected tenant shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed."

- S.38 states as follows*:*

"Section 38 - Right of protected tenant to purchase land:

(1) Notwithstanding anything to the contrary in any law, usage or contract, and subject to the provisions of sub-section (7), a protected tenant shall at any time after the commencement of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1954, be entitled to purchase the landholder's interest in the land held by the former as a protected tenant.

(2) A protected tenant who desires to exercise the right conferred by

sub-section (1) shall make an offer to the landholder stating the price which he is prepared to pay for the land holder's interest in the land up to fifteen times for dry lands or eight times of wet lands irrigated by wells and six times of wet lands irrigated by other sources, of the rent payable by him, and where he is not entitled to purchase the whole of the land, the portion thereof which he is not entitled to purchase.]

(3) If the landholder refuses or fails to accept the offer and to execute a sale deed within three months from the date of the offer, the protected tenant may apply to the Tribunal for the determination of the reasonable price of the land.

(4) On receipt of an application under sub-section (3) the Tribunal shall give notice to the applicant and the landholder and to all persons who appear to the Tribunal to be interested, of the date, time and place at which the Tribunal will enquire into the application and shall determine the reasonable price of the landholder's interests in the land not exceeding the maximum multiple of rent provided in sub-section (2) in conformity with such rules as may be prescribed:

Provided that where in the opinion of the Tribunal the reasonable price determined under this sub-section, does not sufficiently recompense the landholder for the value of the improvements made by him, such as sinking a well, it shall be competent for the Tribunal, after taking into account the value of the contribution of the protected tenant towards the improvements, if any, to add such further sum as it considers adequate to the price so determined.

(5) The protected tenant shall deposit with the Tribunal the amount of the price determined under sub-section (4)—

(a) either in a lumpsum within the period fixed by the Tribunal, or

(b) in such instalments not exceeding sixteen and at such intervals during a period of not exceeding eight years and on or before such dates as may be fixed by the Tribunal in each case:

Provided that whenever land revenue due on the land is suspended or remitted by the Government, any instalment of the reasonable price payable on such land by the protected tenant shall be similarly postponed:

Provided further that when the reasonable price fixed by the Tribunal is payable in instalments, the protected tenant shall in addition to the instalments be liable for the payment of the land revenue due to the Government on the land till all the instalments are paid.

(6) (a) On deposit or recovery of the entire amount of the reasonable price being made, the Tribunal shall issue a certificate in the

prescribed form to the protected tenant declaring him to be the purchaser of the land and such certificate shall be conclusive evidence of the sale as against the landholder and all persons interested therein and the Tribunal shall also direct that the reasonable price deposited or recovered shall be paid to the land-holder:

Provided that if the application of the protected tenant relates to an 'Inam', the Tribunal shall not issue such certificate unless previous sanction of Government has been obtained therefor.

(b) If a protected tenant is permitted to pay the reasonable price in instalments under the provisions of sub-section (5), interest at the rate of three per cent per annum shall be payable by him in respect of the balance of the price due and if he commits default in respect of any instalment the same may be recovered by the Government as arrears of land revenue.

(c) Every instalment deposited by or recovered from the protected tenant shall be paid by the Tribunal to the landholder.

(d) If the protected tenant fails to pay the entire amount of the reasonable price within the period fixed under sub-section (5), or the same is not recovered from him, the purchase by the protected tenant shall not be effective and he shall forfeit the right of purchase of the land, and the amount paid by him towards the reasonable price shall be refunded to him with interest at three per cent per annum together with land revenue paid by him if any, after deducting therefrom the rent due from him for the period:

Provided that if the amount of reasonable price in respect of which the protected tenant has committed default, does not exceed one fourth of the price fixed by the Tribunal under sub-section (5), the right of purchase of the protected tenant shall not be forfeited and the Tribunal shall cause the balance of reasonable price to be recovered as arrears of land revenue and paid to the landholder.

(7) The right of a protected tenant under this section to purchase from his landholder the land held by him as a protected tenant shall be subject to the following conditions, namely:—

(a) If the protected tenant does not hold any land as a landholder the purchase of the land held by him as a protected tenant shall be limited to the extent of the area of a family holding for the local area concerned.

(b) If the protected tenant holds any land as a landholder, the purchase of the land held by him as a protected tenant shall be limited to such area as along with other land held by him as a landholder will make the total area of land that will be held by him as a landholder equal to the area of a family holding for the local area concerned:

Provided that the land remaining is more than the land which

the protected tenant is entitled to purchase under this section, the first preference to purchase the said land, at the prevailing market price in the local area, shall vest in the protected tenant:

Provided further that in the case of purchase by any person other than the protected tenant, the rights and interests of the said tenant in the lease land, shall continue as before.

(c) The extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than two times the area of a family holding for the local area concerned.]

(8) If in the course of any inquiry under this section any question arises as between the landholder and the protected tenant desiring to purchase land, or as between different persons claiming to be landholders or protected tenants in respect of the whole or any part of the land concerned, regarding—

(a) the area of land which the protected tenant is entitled under sub-section (1) to purchase, or

(b) where he is not entitled to purchase the whole of the land held by him as a protected tenant, the particular portion of that land which he should be permitted to purchase, or

(c) the priority of the rights exercisable by different protected tenants under sub-section (1), or

(d) the person entitled to receive the amount deposited under sub-section (5), the question shall be determined by the Tribunal in the prescribed manner."

· S. 38-A reads*:*

"S.38-A. Procedure when reasonable price is agreed to between the landholder and protected tenant:-

If in respect of an land held by a protected tenant the land-holder consents to sell his interest in the land to the protected tenant and the reasonable price payable therefore by the protected tenant is agreed to between them, the provisions of sub-section (7) of Section 38 shall not apply to such sale, and either the landholder or the protected tenant or both jointly, may apply to the Tribunal and thereupon all the provisions of sub-sections (5), (6) and (8) of that section shall apply mutatis mutandis to such application.

Provided that the reasonable price so agreed to by the parties themselves shall be deemed to be the reasonable price determined by the Tribunal for the purposes of the said sub-sections (5), (6) and (8).

Provided further that if the landholder does not sell the whole of

the land held by him but retains some land with him, the extent of the land remaining with him after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than the area of a basic holding for the local area concerned:

Provided also that the right of the protected tenant shall be limited to the extent of three family holdings in the local area concerned including the land, if any, owned by the protected tenant."

- S. 38-B states **:**

"S.38-B. Procedure when landholder agrees to relinquish his rights in favour of the protected tenant:-

If in respect of a land held by a protected tenant, the land-holder concerned intends to relinquish his interest in the land without receiving any consideration therefore, the provisions of sub-section (7) of Section 38 shall not apply to such a case and the landholder may apply to the Tribunal and thereupon the Tribunal shall issue to such protected tenant a certificate so far as may be as provided for in sub-section (6) of Section 38. Provided that the right of the protected tenant and the grant of the certificate shall be limited to the extent of the three family holdings in the local area concerned including the land, if any, owned by the protected tenant and that any excess over such extent shall vest in the Government free of all right of the said protected tenant;

Provided further that if the landholder does not relinquish the whole of the land held by him but retains some land with him, the extent of the land remaining with him after the relinquishment, whether to cultivate it personally or otherwise, shall not be less than the area of a basic holding for the local area concerned.

- S.38-C reads*:*

"38-C. Minimum holding in case of sale:-

(1) If a landholder does not hold land in excess of three family holdings, he may within two years from the date of receipt of a notice in writing from the protected tenant to sell the land to him under sub-section (1) of Section 38, terminate the tenancy of the said protected tenant in the manner and subject to limits specified in Section 44 or sell the land to him.

(2) If after the termination of the tenancy, the landholder does not within one year from the date on which he resumed possession of the land, cultivate the land personally or having commenced such cultivation discontinues the same within ten years from the said date, the

protected tenant shall be entitled to restoration of possession of the land and its purchase in accordance with the provisions of Section 38.

- S.38-D states as follows*:*

"S. 38-D. Procedure when landholder intends to sell land to a protected tenant:-

(1) If the landholder at any time intends to sell the land held, by the protected tenant, he shall give a notice in writing of his intention to such protected tenant and offer to sell the land to him. In case the protected tenant intends to purchase the land he shall intimate in writing his readiness to do so within (six months), from the date of the receipt of such notice. If there is any dispute about the reasonable price payable by the protected tenant for the land, the provisions of sub-sections (3) to (8) of Section 38 shall apply mutatis mutandis.

(2) If the protected tenant does not exercise the right of purchase in response to the notice given to him by the landholder under sub-section (1) such protected tenant shall forfeit his right of purchase of the same and the landholder shall be entitled to sell such land to any other person. On such a purchase by any other person;; the protected tenant shall forfeit all his rights in the land save those provided for in Section 41.

- S. 38-E reads*:*

"S. 38-E. Ownership of lands held by protected tenants to stand transferred to them from a notified date:-

(1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment, decree, contract or grant to the contract, the Government may, by notification in the (Andhra Pradesh Gazette), declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands;

Provided that where in respect of any such land, any proceeding under Section 19 or Section 32 or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding."

69. On an interactive analysis of the above provisions, it is clear that protected tenants' right to get ownership certificate under S. 38 is subject to the holding limits prescribed in sub-section (7) of the said Section. Although sub- section (7) of S. 38 does not apply in respect of lands claimed by protected tenants under S. 38-A of the Tenancy Act; under the second and third provisos to S. 38-A, different holding limits are prescribed and unless these are met, a sale certificate under S. 38-A may not be granted. The situation is similar in respect of claims for a sale certificate under S. 38-B as well. Even rights of the protected tenants to obtain ownership certificates under S. 38-E are subject to the conditions laid down in S. 38(7).

70. In the above view of the matter, it is necessary to determine the area of "family holding" of Kastopa and of each of the persons claiming to be protected tenants (in the capacity as a land holder or protected tenant), under S. 4 of the Tenancy Act. This involves a fact finding enquiry into the nature of the land (wet land or single crop land), the type of soil in the land (black cotton or laterite soil, chalka soils). Only thereafter, i.e., consequent upon a determination of the extent of family holding of Kastopa and of each of the protected tenants under S.4, is it possible to ascertain and determine if at all, and the extent to which, the alleged protected tenants are entitled to ownership certificates under S.38, 38-E or sale certificates under S. 38-A and 38-B of the Tenancy Act. There is no material on record before this Court that facilitates determination of these sequential steps. Only on the basis of evidence adduced by the State and/or the parties, these aspects can be decided. In view of the contoured jurisdiction of this Court under S. 91 of the Tenancy Act, we do not intend to go into these issues, as we are of the considered view that these factual and potentially

contestable matters are more appropriately determined by the primary authority under the Tenancy Act, for consideration.

71. Neither the RDO while passing the order dt.25.4.1995 granting ownership certificate u/s.38-E, or the order dt.28.4.2001 granting sale certificate u/s.38-A of the Tenancy Act, nor the Joint Collector in his order dt.9.12.2003 in Case No.F2/4902/2001 and Case No.F2/4903/2001 impugned herein, have gone into these matters despite the statutory mandate and corollary obligation to do so.

72. It is contended by respondents 8-72 that the application dated 19-08-1996 filed before the R.D.O., Chevella by the alleged protected tenants, purported to be an application both under S. 38-A and S. 38-B of the Tenancy Act in respect of Ac.84.00 gts. in Sy. Nos.46, 47, 51, 52 and 53 of Gachibowli village, it is pleaded that late Ilias Burney and his heirs and/or successors had relinquished their rights in respect of the said land. The respondents contend that under Sec. 38-A, there should be an agreement between the landholder and the protected tenant for sale of the landholders interest for a price whereas under S. 38-B, the landholder relinquishes his interests in the land without receiving any consideration. So an application by a protected tenant can either be under S. 38-A or S. 38-B but not under both sections. We find considerable force in this contention. In our view, the mention of relinquishment by Ilias Burney and his heirs and/or successors suggests that there is no sale in favour of the alleged protected tenants/applicants and therefore the application filed by them can only be considered as one under S. 38-B. But as apparent from the order of the RDO, Chevella in Case no.G/3640/96 dt.28.4.2001, the applicants before him/ the alleged protected tenants eschewed the said plea. They

examined Anilkumar Kamdar, son of late Rasiklal Kamdar, who stated in a sworn statement dated 21-04-2001 that Kastopa had entered into an “agreement of sale” in 1970 with Khanamet Balaiah, Gadde Mysaiah and others in respect of land bearing Sy. Nos.46, 47, 51, 52 and 53 of Gachibowli village of extent Ac.65.00 gts. and received consideration @ Rs.1000/- per acre from the protected tenants, before the Land Reforms Authority. This agreement was not produced before the R.D.O. and had never seen the light of the day, at any time prior thereto or subsequently. Sri P.Venugopal Reddy, the GPA holder of the protected tenants recorded a sworn statement on 21-04-2001 contradicting Anilkumar Kamdar and testified that the lands covered by Sy. Nos.46, 47, 51, 52 and 53 were purchased by the protected tenants from the landlord Kastopa under a “simple sale deed”. These contradictions were neither adverted to nor their effect considered by the RDO, Chevella.

73. The Revenue Divisional Officer in his order dated 28-04-2001 in Ref.G/3640/96 directed issuance of S. 38-A sale certificate (and not under S. 38-B), despite averments in the application speaking of relinquishment by the landlord, which is not supported by the oral evidence/sworn statements recorded by him in the enquiry. Further, the legislatively mandated ceiling limits, prescribed under provisos to S. 38-A or S. 38-B of the Tenancy Act were neither adverted to or considered by the RDO nor is there a finding recorded in the said order, that the ceiling limits as to the holdings are complied with by each of the protected tenants. The RDO, Chevella does not also appear to have looked into any original record relating to the tenancy such as the final tenancy register to ascertain who were the protected tenants. The petitioners before the RDO had only relied on the order dt.15.7.1987 in W.P.4059/1982 and the order dt.25.1.1993 in W.A.No.1420/1987 apart from the

certificate u/s.38-E of the Tenancy Act ; not any original records. Thus the order dt.28.4.2011, is passed without reference and fidelity to mandatory statutory provisions as to holding limits; without verification of the original records; not adverting to and failing to reconcile inconsistencies in the claim of the applicants/petitioners before him.

Therefore, we hold that the order dt.28.4.2001 in Proc.No.G/3640/1996 of the Revenue Divisional Officer, Chevella is perverse and unsustainable. This order is accordingly quashed.

74. The Joint Collector in his order in Case Nos.F2/4902/2001 and F2/4903/2001 dt.9.12.2003, concluded that the some of the alleged protected tenants had executed 588 sale deeds in favor of respondents 8-72 herein along with Kastopa and that this amounts to relinquishment of protected tenancy rights u/s.19 of the Tenancy Act. The appellate authority/ Joint Collector thus ignored the mandatory and non-derogable procedure prescribed u/s.19 of the Tenancy Act, for recording a surrender of protected tenancy rights before the statutory authority, i.e., the Tahsildar. Admittedly the 588 or more sale deeds (except maybe only one sale deed) were not filed before the Joint Collector. Without the said sale deeds having been brought on record before him, he could not have assumed how many sale deeds were executed. The Joint Collector consequently failed to consider whether the sale deeds, if executed, were executed by all or some only of the alleged protected tenants and whether they were valid when the procedure u/s.38-D of the Act is pleaded or established to have been followed. He should have atleast gone into the issue of holding limits prescribed under the Tenancy Act and enquired whether Kastopa or the alleged protected tenants individually satisfy the mandated requirements and whether a single application by several joint tenants is

maintainable. This vitiates his order in a very fundamental sense.

Therefore the order dt.9.12.2003 in Case No.F2/4902/2001 of the Joint Collector , Ranga Reddy District is also unsustainable and is accordingly declared invalid and inoperative.

75. We record our disapproval of the casual approach, wooly reasoning and breezy conclusions by the RDO and the Joint Collector. These authorities have clearly abdicated their statutory and quasi judicial obligations of fidelity to even minimum standards of forensic discipline in passing orders casually and negligently.

76. We have adverted to and note that respondents 8 to 72 in C.R.P.No.6708 of 2003 seriously disputed the fact that the petitioners in the said Revision are protected tenants. The petitioners in the said C.R.P. have also emphatically contested the right, title and interest of respondents 8 to 72, to participate in the *lis* and obtain reliefs.

77. The petitioners in C.R.P.No.6708 of 2003 assert that they are protected tenants of the entire lands owned by Kastopa. They rely on ownership certificates under S. 38-E of the Act issued to them on 25-04-1995 in respect of Ac.73.03 gts., mentioned above. We have already held that the said grant of ownership certificates under S. 38-E of the Tenancy Act is without jurisdiction. Therefore these certificates are of no probative value and cannot be relied upon by the petitioners in C.R.P.No.6708 of 2003 in support or substantiation of their plea to being protected tenants. Petitioners also rely upon the order dated 15-07-1987 in W.P.No.4059 of 1982 as confirmed by the order dated 25-01-1993 in W.A.No.1420 of 1987, on the basis of which the above certificates under S. 38-E were granted to them. We have already analyzed and

concluded that the directions in W.P.No.4059 of 1982 and/or W.A.No.1420 of 1987 cannot be constitutive of non-existing or eclipsed rights nor inhere jurisdiction on authorities contrary to law and binding precedents; and that the consequent decisions founded on these orders of the Court are *coram non-judice,* for reasons recorded by us supra.

78. In the report of the RDO dated 27-07-1981 in Ref.G/1565/81, drawn up pursuant to the order dated 17-02-1981 in W.P.No.4590 of 1980, there are several observations recorded about tampering of some of the revenue records and their suspicious nature. In the order dated 17-02-1981 in W.P.No.4590 of 1980, the High Court also noted that the Register of Protected Tenants prepared under S. 37-A of the Act was not placed before it. The said register also does not seem to have been considered by the primary Tribunal (R.D.O., Chevella) or the appellate Tribunal (Joint Collector) whose orders are in challenge before this Court in C.R.P.No.6708 of 2003.

79. It requires to be noticed that 22 persons had filed W.P.No.4590 of 1980 before this Court claiming to be protected tenants. In the enquiry by the R.D.O., only petitioners 1 to 4 in W.P.No.4590 of 1980 were found to be persons declared as protected tenants. Of these four, one Darugupalli Babaiah (4th petitioner in W.P.No.4590 of 1980) was found by the R.D.O. to have died 8 years prior to 1981 and if this is true, he could not have figured as a petitioner therein. W.P. W.P.No.4059 of 1982, filed subsequently had 24 petitioners as against 22 petitioners in W.P.No.4590 of 1980 and some of the petitioners are common to both the writ petitions. Even though the R.D.O. had found that only four of the petitioners in W.P.No.4590 of 1980 are protected tenants, it was claimed in W.P.No.4059 of 1982 that all the petitioners

therein are protected tenants. This demographic expansion of protected tenancy is not explained anywhere.

80. It is contended by the respondents that the R.D.O. had no jurisdiction under the Act to conduct the enquiry; that only the Tahsildar is competent to enquire into issues of acquisition of rights by succession under Rule 25 read with Rule 14 of the AP (Telangana Area) Tenancy and Agricultural Land Rules, 1950; and that though under S. 40 of the Act, tenancy rights are heritable only by lineal descendants and in their absence by the widow of a deceased protected tenant, the R.D.O. recognized brothers' children as tenants and a widow of the deceased along with her sons, as successors.

81. Many of the individuals who filed applications for grant of S. 38-E certificate and S. 38-A certificate before the R.D.O., Chevella are different from persons who filed W.P.No.4590 of 1980 and W.P.No.4059 of 1982. Mohd. Ismail, Ahmad Sab and Kasim Ali whose legal representatives were granted Section 38-E certificates on 25-04-1995 did not figure in W.P.No.4590 of 1980 and W.P.No.4059 of 1982. Syed Karim, Mohd. Ghouse, Mohd. Wazir, Mohd. Yousuf and Ahmad Wazir who apparently profess the Muslim faith and were granted ownership certificate under Section 38-A are not parties either in W.P.No.4590 of 1980 or in W.P.No.4059 of 1982.

82. What is the probative or evidentiary value of the report of the R.D.O. dated 27-07-1981 has to be considered, as also the original records verified before determining whether there were protected tenants and if so, their identity.

83. Respondents also contended that petitioners placed reliance (in their application dated 19-08-1996 for

grant of sale certificate under S. 38-A of the Tenancy Act) upon a document purporting to be a final register of protected tenants under S. 37-A of the Tenancy Act which also contains names of persons who had succeeded to the deceased protected tenants; that this document has no legal sanctity; that there is no form "B" certificate under S. 37-A produced by the petitioners; that petitioners failed to prove their possession of the lands in Sy. No.51 to 53 paiki as required by S. 37-A; that the Seshala Pahani filed by the petitioners for the period 1955 to 1958, shows only the possession Ilias Burni ; and consequently C.R.P.No.6708 of 2003 requires to be dismissed.

84. *Ex-hypothesi* if petitioners in C.R.P.No.6708 of 2003 are protected tenants, it is alleged by the respondents that there was a compromise in A.S.No.25/58 by them apart from a compromise dated 30-05-1975 in File No.LRC No.47 of 1975 before the Additional Revenue Divisional Officer, Taluk West District Hyderabad who was the authority dealing with the Ceiling proceedings of Kastopa; and these compromises would amount to surrender of protected tenancy rights by the protected tenants. The validity of these compromises is seriously contested by the petitioners who contend that the mandatory procedure under Section 19 of the Tenancy Act has not been followed and any such alleged compromise by surrender is contrary to law, void and of no legal consequence.

85. We do not propose to enter into any factual enquiry on the above competing contentions/ assertions, in view of the restrictive jurisdiction conferred on this Court under Section 91 of the Tenancy Act. The primary authority under the Tenancy Act is competent and has the jurisdiction to consider these issues as well.

86. As regards the question whether respondents 8 to 72 in C.R.P.No.6708 of 2003 acquired any rights in the lands in Sy. Nos. 51 to 53 of Gachibowli village, petitioners in

CRP.No.6708/2003 asserted that the sale of plots from Kastopa and others in 1986/1987 is invalid being violative of S. 38D of the Tenancy Act and the judgment of the Supreme Court in **Kotiah's case (9 supra).** But respondents contend that S.38D does not render the sales in their favor void; that the sales are consistent with S.38D; that there is no prohibition against a sale by both landholder and protected tenant to a third party in S.38D; that S.38D merely provides a right of preemption; that such sales are not void as against the landholder or voidable at the instance of the protected tenants; that under the law of preemption, the preemptor has only a right to have his name substituted in the place of the vendor in the offending sale deed; and that if the remedial right of pre-emption is exercised, title would go to the pre-emptor and if not, title remains with the purchaser but in either case will not revert to the seller. They also assert that no remedy is provided under the Tenancy Act to a protected tenant to enforce his right of preemption and he ought therefore only recourse remedies under common law.

87. Only a few sale deeds (photo copies) apart from a copy of the sale deed dated 28-07-1987 have been filed by respondents 8 to 72 before this Court. It is the contention of respondents 8-72 that 588 or more such sale deeds were executed by Kastopa; and that M/s Diamond Hills Welfare Association was formed by 588 purchasers. Some of the persons noted in the sale deed dated 28-07-1987 as protected tenants have disputed that they signed or executed the said sale deed or other sale deeds. In the absence of all the sale deeds under which respondents 8 to 72 claim right, title or interest in the lands purchased by them being brought on record, it is difficult and inappropriate for this Court to examine the existence or extent of the rights of the respondents, under the sale deeds.

88. Further, the status of M/s. Diamond Hills Welfare Association as a corporate body having a separate legal entity and having the capacity and authority to represent its members is seriously questioned by the petitioners in C.R.P.No.6708 of 2003. They contend that the said Association has no proprietary interest in the land and being a Society registered under the Societies Registration Act, 1860, it is not a juristic person and could not have filed an appeal as held in **Illachi Devi Vs. Jain Society**[64].

We do not propose to go into these issues. The primary authority under the Tenancy Act ought to consider these issues.

89. Although Kastopa and some of the alleged protected tenants had sold lands in Sy.No.50,51,52 and 53 (paiki) of Gachibowli village in 1986-87 (some of whom are respondents in CRP.6078/2003), the purchasers were not added as parties in W.A.1920/1987, WP.No.3251/1998, CRP.No.3755/1997, WP.No.14708/1999, in proceedings before the authorities under the Ceiling Act including LRA No.89/1996, LRA No.13/2000 or LRA.No.16/2001 even though the purchasers would be affected if sale certificate u/s.38-A were issued in respect of lands which they had purchased and claim to be in their occupation. Admittedly, on 26.5.1999, LRT had accepted surrender of S.No.46,47 and 53 (paiki) admeasuring Ac.37 from Kastopa, but during the course of enquiry u/s.38-A before the Revenue Divisional Officer, Chevella, on 21.4.2001, Kastopa filed an application requesting for retention of the lands in Sy.No.46,47 and 53 (part) and to consider the claim of the alleged protected tenants for Ac.37 in Sy.No.s 51,52 and 53 (paiki) (which extent was sold by Kastopa in

1986/1987 to respondents, as mentioned above). Respondents 8-72 who are purchasers from Kastopa were kept in the dark about this. The plea of Kastopa was accepted by the RDO in his impugned order dt.28.4.2001. Principles of natural justice mandate that in these proceedings, they ought to have been put on notice since such plea of Kastopa adversely affects their right, title and interest in the lands purchased by them. In our view, the respondents 8-72 are not bound by these orders passed behind their back, to which they are not parties and whereat they had no notice or opportunity to participate in.

90. Consequently the orders passed in these proceedings, insofar as these impact rights of the purchasers from Kastopa, are inoperative and cannot prejudicially affect the rights of the purchasers.

91. In **Dattatreya Vs. Mahaveer**[65], the respondent was granted occupancy rights under S. 45 read with S. 48-A of the Karnataka Land Reforms Act, 1961 and by order dated 03-07-1979, the Land Tribunal, Belgaum by order dated 03-07-1979 declared respondents as tenants and granted occupancy tenancy rights under Section 45 of the said Act, with effect from 01-03-1974. This order was not challenged by the appellants by filing any appeal, revision or any other proceeding in any Court whatsoever except for the first time in 1990 by filing a writ petition. In the meantime, in 1981, an occupancy tenancy certificate was also issued in favour of the respondents. On 22-06-1985, an application under S.5 of the Karnataka Certain Inams Abolition Act, 1977 was filed by the appellants for registration as occupants over the same land claiming possession over the land for a very long time; contending that they had been rendering service to the temple of Sri Chandramouleswaradev of Belgam by performing religious worship; and contending that they are

wahivatdars of the said temple. Five years thereafter W.P.No.14033 of 1990 was filed by the appellants challenging the order dated 03-07-1979 granting occupancy tenancy rights in favour of the respondents on the ground of lack of individual notice and also on the ground that it was urban land to which the Karnataka Land Reforms Act would not be applicable. On 03-06-1991, the said writ petition was dismissed on the ground of laches. Thereafter the appellant filed another writ petition No.5495 of 1992 contending that no orders were passed on their application dated 22-06-1985 under S. 5 of the Karnataka Certain Inams Abolition Act, 1977. This writ petition was allowed, directing the Tribunal to dispose of the application of the appellants on merits, in accordance with law and within the stipulated time. The respondents in whose favour the occupancy tenancy right was granted by the order dated 03-07-1979 were not impleaded as respondents in this writ petition and the orders were passed in their absence. Thereafter the Tribunal by order dated 21-09-1993 granted occupancy rights to the appellants under S.12 (2) of the 1977 Karnataka Act. The Tribunal held that it was entitled to reopen the proceedings granting occupancy tenancy rights to the respondents in view of the direction in W.P.No.5495 of 1992. The order of the Tribunal dated 21-09-1993 was challenged in W.P.No.35394 of 1993. A learned Single Judge allowed the said writ petition, set aside the order dated 03-07-1979 passed in favour of the respondents and also the order dated 21-09-1993 in favour of the appellants and directed the Tribunal to consider both the applications as moved by the appellants and respondents in the year 1985 and 1974, respectively. Though validity of the order dated 03-07-1979 passed by the Tribunal was not in question before the learned Single Judge, yet the matter was reopened in a collateral proceeding. Both parties challenged the said

order before a Division Bench. The Division Bench allowed the appeal preferred by the respondents and dismissed the appeal filed by the appellants. Confirming the decision of the Division Bench, the Supreme Court held at para 10, p.3366 -3367, para 12, 13 p.3367-68 as follows:

"10. ……By not impleading the present respondents as parties in writ petition No.5495 of 1992 the appellants deprived the respondents of an opportunity to challenge that order, rather they were kept in dark about the whole proceeding. Any order to consider the application of the appellants moved in 1985 was likely to affect the order dated 03-07-1979 passed in favour of respondents. The appellants knew it, being parties in the earlier proceedings of 1974. The fact thus remains that the material facts were not brought to the notice of the Court and the persons who were ultimately to be effected were avoided to be impleaded as parties. It was merely not a question of non-impleadment of necessary parties technically and strictly in accordance with the provisions of the Code of Civil Procedure rather was very much a question of proper parties being there before the Court particularly in proceedings under Article 226 of the Constitution. The argument tried to be raised otherwise is not tenable."

"…….It was certainly a very relevant fact which was suppressed in writ petition No.5405 of 1992 while making a prayer for disposal of the application moved in 1985. The appellants cannot be allowed to claim any bona fides in not impleading the respondents as parties in that writ petition or about non-disclosure of the earlier order dated 03-07-1979 in respect of the same land and within their knowledge on the ground that it was not necessary to disclose it. As observed earlier, they knew well that if any order is passed in their favour the respondents would be the affected persons. The respondents were deprived from raising this point before the learned single Judge regarding a pre-existing order relating to the same land and non-disclosure of the same. The conduct of the appellants had been far from being fair if not fraudulent. It was a deliberate suppression of material fact which caused prejudice to the respondents. Fair play is the basic rule to seek relief under Article 226 of the Constitution…..

12……..The fact of the matter is that by order dated 03-07-1979 rights of the occupancy tenancy had been granted in favour of the respondents and certificate to the same effect had also been issued in their favour in the year 1981. As indicated earlier also the order was

passed in the presence of the appellants. The result was that the tenancy rights were acquired and granted in favour of the respondents under Section 45 of the Karnataka Land Reforms Act hence the land was not available any more for registration of occupancy under Section 5 (2) (i) of Karnataka Certain Inams Abolition At, 1977, more so when the order dated 03-07-1979 was not challenged much less before or up to the time of moving application dated 22-06-1985. It had attained finality. For the first time it was challenged after a lapse of about 11 years by filing a writ petition, namely, writ petition No.14033 of 1990. We have already noticed that the said writ petition was dismissed ultimately on the ground of laches which order was again not challenged by filing any appeal before the Division Bench or otherwise.

13. Merely by filing a writ petition, impugning an order passed 11 years ago, which petition is dismissed on the ground of laches, does not mean that it automatically by itself reopens the whole matter to be examined in any other collaterals proceedings and the finality attained by the order is lost. Therefore, it is not a question of bar of resjudicata but the point is that in the year 1985 when the application was moved by the appellants under the provisions of the Karnataka Certain Inams Abolition Act, 1977 for registration of occupancy over the land in dispute by virtue of provisions contained in Section 5 (2) (i) of the aforesaid Act, the land was not available for the purpose, as in the year 1979 itself the respondents were granted rights of occupancy tenancy by a forum of competent jurisdiction. The order dated 03-07-1979 is not a void order so as to be ignored in any collateral proceedings nor it was put in question in the proceedings initiated by the appellants in 1985……..”

92. The conduct of Kastopa in not notifying individuals who had purchased plots from it in 1986-87 about it’s subsequent dealings with persons claiming to be protected tenants or about the litigation which ensued subsequently under the Ceiling Act and before the High court and it’s anxiety to get the Ceiling proceedings reopened to help the alleged protected tenants by filing an application before the LRT, is a condemnatory conduct. We also deprecate it’s conduct in offering the land in Sy.No.51,52 and 53 (paiki) (which it had sold to the Respondents 8-72 in 1986-87) to be given u/s.38-A of the

Tenancy Act to persons claiming to be protected tenants instead of land in S.No.46, 47 and 53 for which extent and description the alleged protected tenants had sought sale certificates u/s.38-A.

93. In our considered view, the answers to issues 1 to 4, 6, 9 and 10 formulated by the Supreme Court are inextricably intertwined with the issue whether the petitioners in C.R.P.No.6708 of 2003 are protected tenants and whether respondents in the said C.R.P. have any right, title or interest in the lands in Sy. Nos.51 to 53 allegedly purchased by them. The several contentions of the respective parties adverted to above highlight the respective stands and the difficulty in answering the said questions/issues in exercise of the circumscribed revisional jurisdiction conferred on this Court under Section 92 of the Tenancy Act.

94. There are also several other issues which are mentioned below (on which we have recorded the competing contentions but not our conclusions), which may require analysis and resolution :

a) Whether G.O.Ms.No.183 MA dt.24.3.2000 issued under the A.P.Urban Areas (Development) Act,1975 notifying the subject lands as “residential use” zone takes away the jurisdiction of the authorities under the Tenancy Act in the light of S.102(e) of the Tenancy Act?

b) Whether the report of RDO dt.27.7.1981 has any value and whether the said official is conferred any jurisdiction to determine who is the protected tenant in the light of Rule 14 r/w Rule 26 of the Hyderabad Tenancy and Agricultural Land Rules, 1950 ?

c) Whether respondents in CRP.No.6708/2003 have the *locus standi* to contest the application of the petitioners therein for grant of sale certificate u/s.38-E or 38-A of the Tenancy Act or they may only approach the

civil court or other appropriate forum to canvass their rights , if any, in the property purchased by them ?

d) Whether the order dt.9.12.1975 of the LRT determining the holding of the declarant Kastopa which has attained finality extinguishes the rights of the petitioners in CRP.No.6708/2003, if any, under the Tenancy Act ?

e) If the petitioners in CRP.No.6708/2003 are found entitled to ownership certificate u/s.38-E of the Tenancy Act, would their right to purchase u/s.38 or 38-A of the said Act get exhausted ?

f) Is it permissible in law to grant of a joint certificate either u/s.38-E or S.38-A of the Tenancy Act to several persons claiming to be protected tenants?

g) Whether the sale deeds relied upon by the respondents 8-72 in CRP No.6708/2003 are violative of S.38-D of the Act and if so, whether the sale deeds are void ?

95. The Result :

On the afore stated analyses, observations and conclusions :

(a) C.R.P.S.R.Nos.24532 of 2012 and 24636 of 2012 are dismissed with costs payable by the petitioners therein to the private respondents therein. C.R.P.No.1200 of 2003 is allowed with costs of Rs.10,000/- payable by Kastopa to the State;

(b) C.R.P.6708/2003 is allowed but without costs and the order dt.28.4.2001 of the RDO, Chevella in Ref. No.G/3640/1996 and the order dt.9.12.2003 of the Joint Collector, Ranga Reddy District in Ref. F2/4902/2001 are set aside;

(c) The matter is remitted to the RDO, Chevella, to consider afresh whether petitioners in CRP.No.6708/2003 are entitled to ownership certificate u/s.38-E and/or sale

certificate u/s.38-A of the Tenancy Act in respect of land of an extent Ac.36.25 cts retained by Kastopa (which is the balance left out of Ac.190.17 gts (equivalent to Ac.190.42 cts) owned by it, after deducting (i) Ac.137.17 cts surrendered by Kastopa to the State under the Ceiling Act, and (ii) Ac.17.00 in Sy.No.50 of Gachibowli village (in which the petitioners never claimed to be protected tenants), in Sy.No.51, 52 and 53 of Gachibowli village, Serilingampally Mandal, Ranga Reddy District, in the light of the applications filed before the said authority ; and to consider the issues set out in para 94 supra in conformity with the observations, analyses and conclusions recorded in this Judgment; apart from issues 1-4,6,9 and 10 formulated by the Supreme Court in it's order dt.7.12.2010 in Civil Appeal No.3054 of 2006, after affording opportunity to all affected parties including R.8-72 and after duly verifying all the relevant records in original;

(d) Liberty is preserved to all the necessary and proper parties to adduce evidence, oral or documentary as they consider appropriate. The entire exercise shall be concluded by the RDO, Chevella, within 12 months from the date of receipt of a copy of this order;

(e) Pending disposal of the matter afresh by the RDO, Chevella, status quo prevailing as on today be maintained in all respects by all parties in respect of the land of Ac.36.25 cts in Sy.No.51, 52 and 53 of Gachibowli village;

(f) The State is declared entitled to forthwith resume possession of the land of an extent of Ac.137.17 cts in Sy.No.s 35-37,40,42-47 and 53 part of Gachibowli Village, Serilingampally Mandal, Ranga Reddy District, which had irrevocably vested in it under provisions of the Ceiling Act; and

(g) As petitioners have made no claim at any time that

they were protected tenants in respect of land admeasuring Ac.17.00 in Sy.No.50 of Gachibowli village, the decision in these cases will not in any manner affect the purchasers or possessors of the said extent of land.

96. We place on record our deep appreciation for the assistance rendered to us by all the counsel on record.

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JUSTICE GODA RAGHURAM

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JUSTICE M.S.RAMACHANDRA RAO

Dt. : 25-02-2013
Kk/kvr/siva

LR Copy to be marked : YES

HON'BLE SRI JUSTICE GODA RAGHURAM
AND
THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P.Nos.6708 and 1200 of 2003,
C.R.P.S.R.No.24532 of 2012 and C.R.P.S.R.No.24636 of 2012

Dt : 25-02-2013
Kk/kvr/siva

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[1] AIR 1988 A.P.77 (F.B)
[2] AIR 1994 A.P.57
[3] (2008) 16 SCC 299
[4] (2004) 2 ALD 526
[5] (1976) 2 APLJ 91
[6] (2004) 1 SCC 681
[7] (1975) 1 SCC 559
[8] (1971) 2 APLJ 266
[9] AIR 1989 SC 1753
[10] (1978) 2 ALT 227
[11] (1957) 2 An.W.R 478
[12] (1961)1 An.W.R.120
[13] (1995) Supp (2) SCC 3

[14] (1996) 5 SCC 496

[15] (1997) 6 SCC 277

[16] (1999) 4 ALD 113

[17] (1997) 5 ALT 1

[18] (1993) Supp(2) SCC 146

[19] (2009) 2 SCC 526

[20] (2009) 3 ALD 491 (D.B.)

[21] (2003) 1 SCC 102

[22] (1992) 2 ALT 169 (D.B.)

[23] (2002) 2 ALD 678 (D.B.)

[24] (1978) 1 ALT 73 (NRC)

[25] (1995) 2 ALT 89

[26] AIR 1997 SC 3127

[27] AIR 1978 AP 200

[28] AIR 1979 SC 1320

[29] Chief Justice A.P.vs.L.V.A.Dikshitulu ... AIR 1979 SC 193; Isabella Johnson vs. M.A.Susai... AIR 1991 SC 993

[30] (2005) 10 SCC 603

[31] (2004) 3 SCC 1, (2004) 1 SCC 497, (2006) 13 SCC 401, (2007)2 SCC 355 AND (2009) 12 SCC 280

[32] This principle laid down in *Gadde Venkateswar Rao v. Govt. AP* AIR 1966 SC 828 (Para 18) is consistently followed, the latest being AIR 2009 SC 713

[33] Expl. III to Sec. 34(1); Sec. 34(2) & Expl. to Sec. 34 (2) & (3) of the Tenancy Act

[34] Union of India v. Amarendra... AIR 1967 Cal 119

[35] Bishan Singh v. Khajan Singh ...AIR 1958 SC 838. The nature of primary and secondary rights of pre-emption are explained and it was pointed out that the effect of a decree for pre-emption is substitution of the name of the pre-emptor in the place of the vendee under the offending sale. From this it is clear that the flow of title from the vendor to the vendee is not arrested

[36] Chet Ram v. Amin Lal ...AIR 1983 Punj 50 (FB); Chandiram vs. The State of Punjab ... AIR 1974 Punj243 (FB); Shankerlal Gupta vs. V.Jogeswara Rao... AIR 1980 AP 181 (FB). Specifically in respect of a right of pre-emption under Sec. 22 of the Hindu Succession Act, the Kerala High Court held that there was nothing in the section which indicates that a sale in contravention thereof would be void. Villivi Sridevi Amma v. Subhadra Devi ...AIR 1976 Ker 19.

[37] In contradistinction, Sec. 16 of the A.P. (Andhra Area) Tenancy Act 1956 confers comprehensive jurisdiction on the Special Officer. Consequently the remedial right of pre-emption under Sec. 15 of the Andhra Area Act can be pursued before the Special Officer

[38] (1859)6 CB (NS) 336

[39] Dealing with the right of pre-emption under Sec. 22 of the Hindu Succession Act,the Calcutta High court in Tarak Das V. Sunil Kumar ... AIR 1980 Cal 53 held that the remedy is by way of a civil suit.

[40] K.K.Seshadri V. R.M.Seshadri ... AIR 1973 SC 1311 and Roshanlal V. Madanlal

... AIR 1975 SC 2130

[41] (1989) 1 SCC 101 (Para 11 @ page 110.

[42] (2001) 3 SCC 537 (para 11 & 14 @ page 543-544)

[43] (1996) 10 SCC 671

[44] AIR 2007 SC 1145

[45] 1961 (1) An.W.R.413

[46] 2001 (10) SCC 605

[47] 1977 A.L.T. 174 (DB) (NRC)

[48] 2004 (1) S.C.C 287

[49] (2010) 6 S.C.C. 427

[50] (2008) 7 SCC 293

[51] AIR 2002 SC 1003

[52] AIR 1998 SC 3335

[53] 2001 (3) ALD 469

[54] (1991) 1 SCC 37

[55] 1957 ALT 217

[56] 1960 ALT 10

[57] (1999) 2 SCC 297

[58] AIR 1963 SC 698

[59] (2003) 9 S.C.C. 525

[60] (2004) 8 SCC 706

[61] (2009) 2 SCC 315

[62] (2000) 7 S.C.C. 291

[63] (1978) 1 APLJ 478

[64] (2003) 8 S.C.C. 413

[65] AIR 2004 S.C. 3362